DOES THE NAME "NARUTO" RING A BELL? THE DOUBTFUL COPYRIGHT STATUS OF HOME SECURITY CAMERA VIDEOS

By Frank D. LoMonte[*] *and Wesley Reed*[**]

[*] Adjunct Instructor, University of Georgia School of Law. Senior Counsel, Cable News Network, Inc. J.D., University of Georgia School of Law, 2000. B.A., Georgia State University, 1992.
[**] J.D. (anticipated) 2025, Emory University School of Law. B.A., Hofstra University, 2018.

INTRODUCTION

Turn on a television news program, or click on a social media site, and after watching for any sustained period, you are likely to see video recorded by a home surveillance camera. While designed to capture and deter crime, security cameras at times also record small moments of humor (*e.g.*, a persistent cat begging to be let indoors)[1] or candid images of human tragedy (*e.g.*, a plane crashing onto an automobile).[2] Perhaps one of the most valuable pieces of home surveillance footage ever shot — footage that has not (yet) made its way into public view — is the video blamed for impelling boy-band pop idol Joe Jonas to file for divorce from his movie-star wife, Sophie Turner.[3]

Broadcasters have long relied on freelance contributions by non-employees who submit photos and videos. A well-developed body of copyright law governs the freelancer relationship and establishes who owns the work product.[4] But the widespread adoption of automated cameras that can activate without human intervention — and the incorporation of the resulting images into mainstream media coverage — raises novel questions about what it means to "create" a piece of work that can qualify for copyright protection. So far, there is no indication anyone has litigated the copyright ownership of a video recorded by a doorbell-activated security camera. However, as home security videos gain value as

---

[1] Ryan Ross, Let Me in Right Meow! *Clever Cat Knows to Ring the Doorbell to Be Let Back Inside*, USA TODAY (June 28, 2023, 1:37 PM), https://www.usatoday.com/videos/life/animalkind/2023/06/28/smart-cat-knows-ring-doorbell-when-time-go-inside/12178044002/ [https://perma.cc/WT2X-8TA8].

[2] Ryan W. Miller, *Doorbell Camera Captures the Horrific Moment When a Small Plane Crashed into an SUV in Florida*, USA TODAY (Mar. 16, 2021, 9:04 PM), https://www.usatoday.com/story/news/nation/2021/03/16/florida-plane-crash-ring-doorbell-camera-capture-crash-into-suv/4713884001/ [https://perma.cc/Y3XQ-XTA8].

[3] *See* Jaime Harkin, *Inside Joe Jonas and Sophie Turner's Messy Divorce*, US WEEKLY (Sept. 27, 2023), https://www.usmagazine.com/celebrity-news/news/why-joe-jonas-and-sophie-turners-divorce-turned-so-nasty/ [https://perma.cc/N2QB-4DD7] (reporting that Turner's unflattering remarks about her husband on home surveillance video were "the final straw" that broke the A-list couple's strained marriage).

[4] *See* James Creekmore & Andrew P. Connors, *Understanding Intellectual Property: A Guide for Artists*, 7 LIBERTY U. L. REV. 317, 321-24 (2013) (explaining presumptions governing copyright ownership and how parties can contractually agree to override normal presumptions in a freelancer relationship).

sources of mainstream entertainment and information,[5] disputes over the right to redistribute and publish the images seem inevitable. This article will examine who — if anyone — might own the intellectual property rights to a video recorded by a motion-activated, door-mounted surveillance camera.

Section II sets out the fundamental copyright rules that protect the ability of people who create original works to control, distribute and monetize their work for a statutorily protected period of exclusivity. It explains the rules and presumptions that have applied for decades in the ordinary case of images snapped by photographers, recorded by filmmakers, or drawn by artists. With those principles in mind, Section III then looks at how technological innovations have muddied what it means to "create" a visual work, as technology has gained the ability to activate cameras, compose drawings, and otherwise produce visual content without direct human activation. In particular, works generated by artificial intelligence ("A.I.") technologies are testing traditional notions of what it means to be a "creator," and who — or *what* — can qualify. This section applies established copyright principles and the earliest wave of "automated-creator" cases to consider the question of who — if anyone — has intellectual property rights in a video recorded by a motion-activated surveillance camera. It also examines how the leading U.S. vendors of doorbell-cam technology have provided contractually for allocating I.P. rights in images recorded using their technology and what those contracts might mean in the event of a dispute over non-consensual redistribution of home security footage. Section IV considers whether, even if there are both a cognizable copyright interest in a doorbell video and a legally recognized creator who can assert it, a copyright claim will have any practical viability, given the commodious fair-use doctrine that affords commentators, educators and news publishers substantial leeway to reproduce the work of others. The article concludes that, while it appears likely that doorbell-cam videos will

---

[5] *See* Maura Arnold, *Is the Recent Rise in Doorbell Cameras Creating a Surveillance State?*, J. HIGH TECH L.: BLOG (Apr. 15, 2021), https://sites.suffolk.edu/jhtl/2021/04/15/is-the-recent-rise-in-doorbell-cameras-creating-a-surveillance-state/ [https://perma.cc/CP8J-DELV] (describing proliferation of doorbell-cam clips on social media sites: "A slip and fall on ice, a puppy making his escape as his owner runs after him, or friends making funny faces as they ring the doorbell have all become frequently viewed and circulated clips on social media sites.").

not cross the threshold to qualify for copyright protection absent the addition of creative elements modifying raw footage, it would be beneficial for the legal system to clarify ownership rights, as disputes over the republication of economically valuable videos seem inevitable.

I. COPYRIGHT, PHOTOGRAPHY AND VIDEOGRAPHY

Copyright law dates back to the earliest days of the republic, recognized in the Constitution as necessary "[t]o promote the Progress of Science and useful Arts[.]"[6] The animating theory behind copyright law is that affording creators some protected period of exclusivity to control the sale and distribution of their work will provide incentives for contributing advancements to culture.[7] Copyright law attempts to strike a balance between the interests of the creator in profiting from creative work and the public's interest in having access to, and being able to adapt and build upon, the creative output of others.[8] The ultimate objective of the law, which informs how judges apply it, is to benefit society as a whole by facilitating the dissemination of ideas.[9] Congress first codified copyright in 1790, enacting a limited 14-year period of protection for books, charts and maps, using Britain's Statute of

---

[6] U.S. CONST. art. I, § 8, cl. 8.

[7] *See* Mazer v. Stein, 347 U.S. 201, 219 (1954) ("The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors[.]"); Authors Guild v. Google, Inc., 804 F.3d 202, 212 (2d Cir. 2015) ("The ultimate goal of copyright is to expand public knowledge and understanding, which copyright seeks to achieve by giving potential creators exclusive control over copying of their works, thus giving them a financial incentive to create informative, intellectually enriching works for public consumption.").

[8] *See* Dustin J. Corbett, Comment, *A Premier Paradigm Shift: The Impact of Artificial Intelligence on U.S. Intellectual Property Laws*, 17 LIBERTY U. L. REV. 321, 325-26 (2023).

[9] *See* Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 156 (1975) ("Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts."); Fox Film Corp. v. Doyal, 286 U.S. 123, 127 (1932) ("The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labors of authors."). See also Pierre N. Leval, *Toward a Fair Use Standard*, 103 HARV. L. REV. 1105, 1109 (1990) (describing copyright law as "a pragmatic measure by which society confers monopoly-exploitation benefits for a limited duration on authors and artists . . . in order to obtain for itself the intellectual and practical enrichment that results from creative endeavors").

Anne as a model.[10] The Copyright Act has been updated and modernized several times since, with its most recent comprehensive overhaul in 1976.[11] Congress again amended the Act in 1998, significantly extending the duration of copyright protection.[12] The latest wrinkle, enacted in 2020, creates an expedited dispute resolution process to simplify processing small-dollar claims.[13]

The starting point under copyright law is that the creator owns any piece of copyright-protected work.[14] The Copyright Act recognizes only two ways in which the default presumption of ownership may be varied. First, the creator can surrender some or all rights by way of a signed writing.[15] Second, the work may arise as the product of an employer-employee relationship, meaning that the employer owns the rights in the "work made for hire."[16] Ownership carries a bundle of rights that includes the right to control how the work is reproduced, displayed, redistributed, or adapted.[17]

---

[10] *See* Oren Bracha, *The Adventures of the Statute of Anne in the Land of Unlimited Possibilities: The Life of a Legal Transplant*, 25 BERKELEY TECH. L.J. 1427, 1453 (2010) ("America's first federal copyright enactment—the 1790 Copyright Act— is the Statute of Anne phrased in somewhat more modern language and featuring a few omissions, additions, and modifications.") (footnotes omitted).

[11] *See* Fox Television Stations, Inc. v. FilmOn X LLC, 966 F. Supp. 2d 30, 44 (D.D.C. 2013) ("The 1976 Act was enacted as a complete overhaul of its predecessor, the Copyright Act of 1909, to respond to 'significant changes in technology [that] affected the operation of the copyright law.'" (quoting H.R. REP. NO. 94–1476, at 1 (1976), as reprinted in 1976 U.S.C.C.A.N. 5659, 5660) (alteration in original)).

[12] Copyright Term Extension Act, Pub. L. No. 105–298, § 102(b), (d), 112 Stat. 2827, 2827–28 (1998) (codified at 17 U.S.C. §§ 302, 304).

[13] Copyright Alternative in Small-Claims Enforcement Act of 2020, Pub. L. No. 116-260, § 212, 134 Stat. 1182, 2176–200 (codified at 17 U.S.C. §§ 1501–1511).

[14] 17 U.S.C. § 106.

[15] 17 U.S.C. § 204.

[16] 17 U.S.C. § 201(b).

[17] 17 U.S.C. § 106; see also Keith Kupferschmid, *Lost In Cyberspace: The Digital Demise of the First-Sale Doctrine*, 16 J. MARSHALL J. COMPUTER & INFO. L. 825, 829-30 (1998) (stating that Section 106 "essentially means that one needs the permission of the copyright owner to copy the work, make an adaptation of it, distribute it, or perform or display it publicly.").

To qualify for copyright, a work must be original and creative.[18] "Originality" does not require that the work be entirely unique, but rather, that it be the "fruits of the author's intellectual labor."[19] Only a small modicum of creativity is required.[20] A landmark copyright case, *Feist Publications, Inc. v. Rural Telephone Service Co.*, illustrated the importance of creativity in a copyrighted work when the Supreme Court held that a telephone book was not eligible for copyright due to the factual nature of its content.[21] It is not enough to simply compile information—a copyrighted work requires the author to express their idea in a way that is at least minimally creative and original.[22]

In its original iteration, the Copyright Act did not explicitly identify photographs as a category of protectable work, but Congress amended the Act in 1865 to include them.[23] Today, the statute's protection encompasses "two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans."[24] The Supreme Court confirmed the inclusion of creative photographs in the body of copyright-protected works in *Burrow-Giles Lithographic Co. v. Sarony*, which affirmed that a photographer who applied creativity in posing and arranging a portrait of Oscar Wilde was entitled to protect the work against unauthorized duplication.[25]

---

[18] Feist Publns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 345 (1991).

[19] Boisson v. Banian, Ltd., 273 F.3d 262, 268 (2d Cir. 2001) (brackets and citation omitted).

[20] *See* Rogers v. Koons, 960 F.2d 301, 307 (2d Cir. 1992) (observing that "the quantity of originality that need be shown is modest—only a dash of it will do.").

[21] *Feist Publ'ns, Inc.*, 499 U.S., at 362 (stating that alphabetical arrangement of telephone accounts "lacks the modicum of creativity necessary to transform mere selection into copyrightable expression.").

[22] Matthew Bender & Co. v. West Publ'g Co., 158 F.3d 674, 681 (2d Cir. 1998).

[23] Randall P. Bezanson & Joseph M. Miller, Scholarship and Fair Use, 33 COLUM. J.L. & ARTS 409, 422 (2010).

[24] 17 U.S.C. § 101.

[25] Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53, 54-56 (1884).

Courts have almost invariably deemed photographs to be eligible for copyright even when they contain minimal levels of creativity.[26] Even where the photographer made few discretionary decisions, courts have found creativity in such choices as the selection of camera lenses or filters.[27] As one court summarized it:

> The necessary originality for a photograph may be founded upon, among other things, the photographer's choice of subject matter, angle of photograph, lighting, determination of the precise time when the photograph is to be taken, the kind of camera, the kind of film, the kind of lens, and the area in which the pictures are taken.[28]

Even simply "being at the right place at the right time" can sometimes represent enough creative investment to imbue an otherwise purely factual photograph with copyright protection.[29] In a few outlier cases, photos entirely lacking any creativity – such as unadorned images depicting the appearance of commonplace commercial products – have been deemed insufficiently "original"

---

[26] *See* Ets-Hokin v. Skyy Spirits, Inc., 225 F.3d 1068, 1071 (9th Cir. 2000) (concluding that commercial photographer's images of vodka bottles were sufficiently creative for copyright protection "[g]iven the Copyright Act's low threshold for originality generally and the minimal amount of originality required to qualify a photograph in particular . . . ."); see also Latimer v. Roaring Toyz, Inc., 601 F. 3d 1224, 1234 (11th Cir. 2010) ("Except for a limited class of photographs that can be characterized as 'slavish copies,' courts have recognized that most photographs contain at least some originality in their rendition of the subject-matter."); Shrock v. Learning Curve Int'l, Inc., 586 F.3d 513, 519 (7th Cir. 2009) (collecting cases, including Ets-Hokin, and observing that "[f]ederal courts have historically applied a generous standard of originality in evaluating photographic works for copyright protection.").

[27] *See* Rogers v. Koons, 960 F.2d 301, 307 (2d Cir. 1992) ("Elements of originality in a photograph may include posing the subjects, lighting, angle, selection of film and camera, evoking the desired expression, and almost any other variant involved."); Mannion v. Coors Brewing Co., 377 F. Supp. 2d 444, 452-53 (S.D.N.Y. 2005) (enumerating ways in which photograph can qualify as original, including photographer's method of rendition, timing, and staging of scene to be photographed); see also SHL Imaging, Inc. v. Artisan House, Inc., 117 F. Supp. 2d 301, 308-309, 318 (S.D.N.Y. 2000) (finding that commercial photographer's creative choices, such as lighting, were sufficient to qualify photos of picture frames for copyright protection).

[28] E. Am. Trio Prods. v. Tang Elec. Corp., 97 F. Supp. 2d 395, 417 (S.D.N.Y. 2000).

[29] *Mannion*, 377 F. Supp. 2d at 452 (citation omitted); see also Cruz v. Cox Media Grp., 444 F. Supp. 3d 457, 465 (E.D.N.Y. 2020) (citing *Mannion* and finding that amateur photographer who captured image of police shooting and apprehending terrorism suspect made sufficient creative choices to qualify for copyright merely by recognizing the event as newsworthy and timing the click of his smartphone).

to qualify for protection.[30] But this is the exceptional situation. More typically, courts will recognize a highly factual photo as eligible for *some* copyright protection, though the protection will be relatively weak as compared with a photograph that involves a high degree of creative planning and staging.[31]

These baseline principles have been applied for nearly a century-and-a-half to enable photographers to control the distribution and reproduction of their work. More recently, however, technological developments have introduced new complexities into what it means to be the creator of a visual work.[32]

II. AUTHORSHIP ON AUTOPILOT: HOW COPYRIGHT LAW TREATS AUTOMATION

While a "doorbell-cam" case has yet to work its way to a published judicial opinion, some guidance might be gleaned from analogous caselaw in which the U.S. Copyright Office ("USCO") and the courts have wrestled with the extent to which copyright requires a volitional act of human creativity. Philosophically, the objective of granting copyright protection to a work is to reward and

---

[30] *See* Oriental Art Printing, Inc. v. Goldstar Printing Corp., 175 F. Supp. 2d 542, 546-47 (S.D.N.Y. 2001) (concluding that "purely utilitarian" images meant to illustrate Chinese-food serving dishes lacked the minimal creativity to qualify as original works); see also Custom Dynamics, LLC v. Radiantz LED Lighting, Inc., 535 F. Supp. 2d 542, 549 (E.D.N.C. 2008) (citing Oriental Art and holding that "purely descriptive" photos of motorcycle accessories did not cross threshold of creativity to qualify for copyright protection).

[31] *See* Daxton R. Stewart, *Can I Use This Photo I Found on Facebook - Applying Copyright Law and Fair Use Analysis to Photographs on Social Networking Sites Republished for News Reporting Purposes*, 10 J. TELECOMM. & HIGH TECH. L. 93, 107 (2012) ("Regarding photographs, courts focus on the level of expressive conduct shown by the photographer in determining whether works are factual or creative . . . ."). Stewart cites the example of the First Circuit's decision in Nunez v. Caribbean Int'l News Corp., 235 F.3d 18, 23 (1st Cir. 2000), in which the court viewed a portrait of a beauty-pageant queen in a modeling portfolio as reflecting minimal creativity, since the purpose was merely to capture what the model looked like for her career marketing purposes, not to express any particular idea. *Id.* at 104. See also *SHL Imaging, Inc.*, 117 F. Supp. 2d at 311 (finding that photographer's images of commercial products qualify as original, but "are not entitled to broad copyright protection" because of minimal creativity).

[32] *See* Caroline Russ, *Tweet Takers & Instagram Fakers: Social Media & Copyright Infringement*, 22 TUL. J. TECH. & INTELL. PROP. 205, 206 (2020) ("Today, it is no longer clear what constitutes copyright infringement because developments in technology have outpaced changes in the law.").

incentivize creativity.[33] So, because neither machines nor animals need an economic incentive to create work, the USCO's inclination has been to refrain from recognizing works that are the product of non-human acts and choices.[34]

A. When the "Photographer" Isn't a Person

A photo taken – or perhaps, *not* taken – by wildlife photographer David Slater ignited an especially colorful dispute over what it means for a piece of work to be the product of human creativity.[35] During 2011, Slater spent several days in the jungle in Indonesia among a troop of endangered primates, the crested black macaque.[36] After watching curious macaques play with his camera equipment, Slater had the idea to allow them to activate the camera while he held onto one leg of its tripod – resulting in an iconic "monkey selfie" shot of one particularly photogenic macaque baring his teeth in what resembled a classic say-cheese pose.[37]

Slater then licensed some of the macaque photos to a British publication, but his copyright ownership was challenged when an editor with Wikimedia Commons – a site that uploads content only under a free license or in the public domain – posted the photos without permission.[38] Wikimedia Commons argued that the photos were in the public domain because they were taken by a non-human "author."[39] But Slater argued that his contributions and creativity were enough to justify his copyright ownership.[40] In 2014, the USCO updated its guidance as to what qualifies as a work of human authorship eligible for copyright, specifically identifying "a selfie

---

[33] Corbett, *supra* note 8, at 371.

[34] *Id.* at 361.

[35] *See* Matthew P. Hooker, *Naruto v. Slater: One Small Snap For A Monkey, One Giant Lawsuit For Animal-Kind*, 10 WAKE FOREST L. REV. ONLINE 15, 19 (2020) (describing background to Slater's copyright case).

[36] *Photographer 'Lost £10,000' in Wikipedia Monkey 'Selfie' Row*, BBC (Aug. 7, 2014), https://www.bbc.com/news/uk-england-gloucestershire-28674167 [https://perma.cc/Z79J-U92T].

[37] Louise Stewart, *Wikimedia Says When a Monkey Takes a Selfie, No One Owns It*, NEWSWEEK (Aug. 21, 2014, 9:31 AM), https://www.newsweek.com/lawyers-dispute-wikimedias-claims-about-monkey-selfie-copyright-265961 [https://perma.cc/L84P-L3KY].

[38] *Id.*

[39] *Id.*

[40] *Id.*

taken by a monkey" as an example of something that cannot be copyright-protected.[41] In the USCO's view, the fact that a monkey selfie required substantial setup by a human, including making creative choices about camera settings, did not negate the fact that a non-human ultimately captured the photo.[42]

Slater's case took an unexpected turn when People for the Ethical Treatment of Animals ("PETA") interceded, suing in federal court to establish that ownership belonged to the smiling macaque, referred to as "Naruto."[43] The suit was part of PETA's broader quest to establish that animals are entitled to rights approximating legal personhood, although the complaint did not make that claim explicitly.[44] A federal district court dismissed the copyright claim, finding that, as a nonhuman, Naruto had no standing to assert ownership rights.[45] The Ninth Circuit U.S. Court of Appeals affirmed.[46] The appellate court concluded that, had Congress intended to extend standing under the Copyright Act to nonhuman authors, the statute would have said so, but in the absence of any such indication, courts cannot create standing where none exists.[47]

A more recent case – involving a camera activated not by a monkey, but by happenstance – further tested the limits of when courts are prepared to recognize works as eligible for copyright when their creation is not the product of a volitional human act.[48] A gaming streamer named David Stebbins ("Acerthorn"), had a case dismissed by the court when he filed copyright infringement claims for a livestream he had accidentally captured.[49] Stebbins claimed that his video camera activated on its own while he was playing an

---

[41] Stephen Schahrer, *First, Let Me Take a Selfie: Should a Monkey Have Copyrights to His Own Selfie?*, 12 LIBERTY U. L. REV. 135, 148 (2017) (citing U.S. COPYRIGHT OFFICE, COMPENDIUM OF THE U.S. COPYRIGHT OFFICE PRACTICES § 313.2 (3d ed. 2014)).

[42] *Id.*

[43] Naruto v. Slater, 888 F.3d 418, 420 (9th Cir. 2018).

[44] Macarena Montes Franceschini, *Animal Personhood: The Quest for Recognitio*n, 17 ANIMAL & NAT. RES. L. REV. 93, 121 (2021).

[45] Naruto v. Slater, No. 15-cv-04324-WHO, 2016 WL 362231, *4 (N.D. Cal. Jan. 28, 2016).

[46] *Naruto*, 888 F.3d at 426.

[47] *Id.* at 425-26.

[48] *See* Stebbins v. Polano, No. 21-cv–04184-JSW, 2022 WL 2668371 (N.D. Cal. July 11, 2022).

[49] *Id.* at *5.

online video game.[50] He sued several individuals who saved copies of the unintentional livestream and posted them to YouTube and other video-sharing platforms, as well as suing the platforms for hosting the videos.[51]

In its opinion dismissing his case, the court cited the copyright prerequisites both for human authorship and for a minimum degree of creativity.[52] The court rejected Stebbins' contention that he added creative elements by way of his facial expressions, since he did not realize he was being recorded and had no intention of creating a work.[53] Similarly, the court rejected Stebbins' argument that he must have unwittingly pressed a key to start the recording, making the work an act of human creation; because Stebbins "was not engaged in the process of creating an intended work" at all, the recording did not qualify as the product of creativity.[54] Nor did the work qualify as "the product of human authorship," since by Stebbins' own acknowledgment, it appeared to be the result of a mechanical error.[55] This reasoning is significant, since it parallels the likely argument against recognizing copyright in doorbell-cam footage, which typically comes into existence because someone – or some*thing* – who is not the homeowner has triggered a motion-detecting sensor.

B. Are A.I. and LLMs D.O.A. at the USCO?

Computers have been used to perform tasks that customarily required volitional human decision-making – a process known as artificial intelligence ("A.I.") – at least since the 1950s.[56] A.I. has been at work for years, relatively invisibly and behind-the-scenes, in pedestrian applications including recommending which Netflix

---

[50] *Id.* at *1.

[51] *Id.*

[52] *Id.* at 3.

[53] *Id.* at 4.

[54] *Id.*

[55] *Id.*

[56] *See* Gil Press, *A Very Short History Of Artificial Intelligence (AI)*, FORBES (Apr. 14, 2022, 2:04 PM), https://www.forbes.com/sites/gilpress/2016/12/30/a-very-short-history-of-artificial-intelligence-ai/ [https://perma.cc/6UHJ-9TJG] (stating that researchers' August 1955 proposal for research summit is regarded as birth of A.I. as a field, with first true A.I. program coming in December 1955).

videos to watch next.[57] But the revolutionary potential of A.I. – for good or for evil – became a source of pervasive worldwide debate as the public gained access to a powerful suite of "generative A.I." tools beginning in 2022.[58] A.I. programs are considered "generative" when they are able to create entirely new works based on human prompts, as opposed to early iterations of A.I. that simply analyzed large sets of data, or performed rote analytical tasks within a limited set of possibilities such as playing chess.[59] A.I. "learns" by being "trained" on large sets of data, producing outputs that are tested for accuracy (for instance, "generate a picture of a cat").[60] When an inaccuracy is found (for instance, the picture comes out looking like an octopus), the A.I.'s algorithm is able to discern the source of the error through repeated rounds of adversarial testing, and adjust to produce more accurate results.[61] The most widely adopted A.I. technology to date is ChatGPT, a "chatbot" pioneered by tech startup OpenAI, which works on Large Language Model ("LLM") technology by analyzing patterns in databases and generating textual responses to human prompts.[62] ChatGPT became widely available to consumers starting in November 2022, and quickly became one of the fastest-adopted applications in

---

[57] *See* Anjana Susarla, *Forget Dystopian Scenarios – AI is Pervasive Today, and The Risks are Often Hidden*, THE CONVERSATION (Nov. 21, 2023, 6:22 PM), https://theconversation.com/forget-dystopian-scenarios-ai-is-pervasive-today-and-the-risks-are-often-hidden-218222 [https://perma.cc/3C3M-L7YX] (explaining that A.I. technology "plays roles you might be vaguely aware of – for example, shaping your social media and online shopping sessions, guiding your video-watching choices and matching you with a driver in a ride-sharing service").

[58] *See* Lindsey Wilkinson, *The Rise of Generative AI: A Timeline of Triumphs, Hiccups and Hype*, CIO DIVE (Nov. 2, 2023), https://www.ciodive.com/news/generative-ai-one-year-chatgpt-openai-timeline/698110/ [https://perma.cc/9FZH-WXCV] (tracing milestones in adoption of A.I. technologies and marking one-year anniversary of public debut of ChatGPT).

[59] *See* Van Lindberg, *Building and Using Generative Models under US Copyright Law*, 18 RUTGERS BUS. L. REV. 1, 19 (2023) (explaining that "a generative model trained on text data may be used to generate new text, such as sentences, paragraphs, or even entire articles. A model trained on images may be used to create new images.").

[60] *See* Corbett, *supra* note 8, at 354 (explaining how algorithms adjust themselves during "training" process).

[61] *See id.* at 354-56 (explaining methods of A.I. "learning," which involve varying degrees of direct human supervision).

[62] Matt Coatney, *Navigating the Legal Landscape of Generative Artificial Intelligence: The Risks and Opportunities of ChatGPT*, 49 LITIG. 11, 11-12 (2023).

history, tallying an estimated 100 million monthly users within two months of rollout.[63]

The rapid incorporation of A.I. across a vast array of human endeavors provoked strong reactions. ChatGPT proved popular as a labor-saver for its ability to near-instantly churn out written work that would take human hands hours to type – though with significant glitches that proved embarrassing to those who disseminated the work without vetting it for what have become known as A.I. "hallucinations."[64] Some hailed A.I. technology as a transformative disruptor to the global economy and the way work is performed.[65] Others fretted about its downside risks, such as enabling employers to eliminate jobs and students to commit

---

[63] Aisha Malik, *OpenAI's ChatGPT Now has 100 Million Weekly Active Users*, TECHCRUNCH (Nov. 6, 2023, 10:49 AM), https://techcrunch.com/2023/11/06/openais-chatgpt-now-has-100-million-weekly-active-users/ [https://perma.cc/39U7-3RSL].

[64] *See* Aaron Mok, *A Stressed Out Rookie Lawyer Says He got Fired after He Used ChatGPT to do His Job*, BUS. INSIDER (Nov, 17, 2023, 12:50 PM), https://www.businessinsider.com/young-lawyer-fired-using-chatgpt-job-work-hallucinations-errors-2023-11 [https://perma.cc/846L-UZEJ] (reporting that Colorado attorney lost his job after using ChatGPT to assist with writing a motion, which included fabricated case citations); Sara Merken, *New York Lawyers Sanctioned for Using Fake ChatGPT Cases in Legal Brief*, REUTERS (June 26, 2023, 3:28 AM), https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/ [https://perma.cc/F4E8-TB8P] (describing how federal judge fined attorneys who submitted brief generated by ChatGPT that contained six citations to fictitious court cases); see also Clare Duffy, *Gannett to Pause AI Experiment after Botched High School Sports Articles*, CNN (Aug. 31, 2023, 9:12 AM), https://www.cnn.com/2023/08/30/tech/gannett-ai-experiment-paused/index.html [https://perma.cc/MM7V-VQDR] (explaining how a different generative A.I. program, LedeAI, was blamed for awkwardly worded sports stories published in several New York newspapers that contained "major flubs"); Matt O'Brien, *Chatbots Sometimes Make Things Up. Is AI's Hallucination Problem Fixable?*, ASSOCIATED PRESS (Aug. 1, 2023, 11:09 AM), https://apnews.com/article/artificial-intelligence-hallucination-chatbots-chatgpt-falsehoods-ac4672c5b06e6f91050aa46ee731bcf4 [https://perma.cc/QSY8-KH32] (reporting that ChatGPT and other chatbots are prone to generating false results, known as "hallucinations").

[65] *See* Dan Patterson, *This is how Generative AI will Change the Gig Economy for the Better*, ZDNET (July 15, 2023, 5:00 AM), https://www.zdnet.com/article/this-is-how-generative-ai-will-change-the-gig-economy-for-the-better/ (quoting tech executive's assertion that A.I. will relieve creators of rote tasks and enable them to be more productive); see also Martin Neil Baily et al., *Machines of mind: The Case for an AI-Powered Productivity Boom*, BROOKINGS (May 10, 2023), https://www.brookings.edu/articles/machines-of-mind-the-case-for-an-ai-powered-productivity-boom/ [https://perma.cc/W7QZ-8G9B] (arguing that A.I. could be "transformative" for occupations that involve writing, software engineering, and other easily automated tasks, liberating workers to perform higher-level cognitive labor).

academic dishonesty on a grand scale.[66] Still others sounded doomsday warnings that such technologies could become sentient and exterminate their creators.[67]

An early (and less apocalyptic) use-case for generative A.I. came with the advent of graphic-design tools capable of producing vivid illustrations in response to simple instructions.[68] These "diffusion models" work by "training" on actual images, which are sequentially disassembled and then reassembled; through repetition, the models become increasingly adept at using probabilities to turn digital "noise" into identifiable pictures.[69] Users eagerly adopted programs such as DALL-E, Midjourney, and

---

[66] *See* Emil Skandul, *AI is Going to Eliminate Way More Jobs than Anyone Realizes*, BUS. INSIDER (Aug. 24, 2023, 5:00 AM), https://www.businessinsider.com/ai-radically-reshape-job-market-global-economy-employee-labor-innovation-2023-8 [https://perma.cc/74QF-HEML] (citing estimates from World Economic Forum that predict net loss of 14 million jobs worldwide over five-year period due to adoption of artificial intelligence, and citing Goldman Sachs report predicting that 300 million people's jobs could be "disrupted" in some way); Anna Fazackerley, *AI Makes Plagiarism Harder to Detect, Argue Academics – in Paper Written by Chatbot*, THE GUARDIAN (Mar. 19, 2023, 3:00 AM), https://www.theguardian.com/technology/2023/mar/19/ai-makes-plagiarism-harder-to-detect-argue-academics-in-paper-written-by-chatbot [https://perma.cc/EHD7-8JMC] (quoting university instructors' fears that ChatGPT technology has evolved to make A.I.-generated academic papers indistinguishable from original student work). Predictably, the backlash against A.I. soon engendered its own backlash. See Samantha Murphy Kelly, *ChatGPT Did Not Increase Cheating in High Schools, Stanford Researchers Find*, CNN (Dec. 13, 2023, 3:19 PM), https://www.cnn.com/2023/12/13/tech/chatgpt-did-not-increase-cheating-in-high-schools/index.html [https://perma.cc/R6Q3-XMV6] (reporting on research findings indicating that incidence of cheating reported on anonymized student surveys "is the same or even decreased slightly since the debut of ChatGPT" and that fewer than one in five high school students has ever used the platform).

[67] *See* Chris Vallance, *Artificial Intelligence Could Lead to Extinction, Experts Warn*, BBC (May 30, 2023), https://www.bbc.com/news/uk-65746524 [https://perma.cc/6NYJ-6R42] (quoting statement signed by dozens of scientists, executives and other experts calling for safeguards to manage "risk of extinction" accompanying proliferation of artificial intelligence).

[68] *See* Bryant Walker Smith, *Dall-E Does Palsgraf*, 14 CASE W. RSRV. J.L. TECH. & INTERNET 87, 93 (2022) (explaining how image generation tools such as DALL-E use "reinforcement learning" to associate patterns of dots with prompts supplied by users, to generate images fitting users' instructions); see also Gary Myers, *The Future Is Now: Copyright Protection for Works Created by Artificial Intelligence*, 102 TEX. L. REV. ONLINE 8, 20-21 (2023) (describing images created by Midjourney and DALL-E as "indistinguishable from works by human artists").

[69] Tom Hartsfield, *How do DALL-E, Midjourney, Stable Diffusion, and Other Forms of Generative AI Work?*, BIG THINK (Sept. 23, 2022), https://bigthink.com/the-future/dall-e-midjourney-stable-diffusion-models-generative-ai/ [https://perma.cc/L59N-W52G].

Stable Diffusion to automate the work once done by commercial artists.[70]

In its first encounter with A.I.-generated imagery, the U.S. Copyright Office declined to recognize protectable ownership rights in an illustration created by artificial intelligence.[71] In that case, computer scientist Stephen Thaler attempted to obtain copyright registration for a colorful landscape drawing, "A Recent Entrance to Paradise," created by an A.I. program he developed.[72] In his application, Thaler acknowledged that the drawing was produced by a computer, but likened it to a work-made-for-hire in which he claimed ownership as the person who commissioned the work.[73] The Copyright Office rejected that contention on the basis that the work lacked "human authorship," and its reasoning was upheld on appeal by the Copyright Office Review Board.[74] A U.S. district court judge agreed.[75] The court found Thaler's work-made-for-hire argument unavailing because that argument presumed that a valid copyright interest transferred to him by operation of an employer-type relationship, whereas the Copyright Office determined that no copyright ever existed from the start.[76] "Copyright has never stretched so far . . . as to protect works generated by new forms of technology operating absent any guiding human hand, as plaintiff urges here. Human authorship is a bedrock requirement of copyright[,]" the court wrote.[77] In a second case following closely on the heels of the *Thaler* case, the Copyright Office again declined to register a work submitted by an artist using the A.I. technology

---

[70] *See* Kevin Roose, A*.I.-Generated Art Is Already Transforming Creative Work*, N.Y. TIMES (Oct. 21, 2022), https://www.nytimes.com/2022/10/21/technology/ai-generated-art-jobs-dall-e-2.html [https://perma.cc/82FE-53UT]; see also Colin E. Moriarty, *The Legal Challenges of Generative AI – Part 1*, COLO. LAW. (July/Aug. 2023), https://cl.cobar.org/features/the-legal-challenges-of-generative-ai-part-1/ [https://perma.cc/M3ZN-7BLE] (stating that, as of mid-2023, Midjourney had 14.5 million users, and DALL-E was generating about 2 million images each day).

[71] *See* Thaler v. Perlmutter, 687 F. Supp. 3d 140, 150 (D.D.C. 2023).

[72] Franklin Graves, *Thaler Pursues Copyright Challenge Over Denial of AI-Generated Work Registration*, IP WATCHDOG (June 6, 2022, 4:22 PM), https://ipwatchdog.com/2022/06/06/thaler-pursues-copyright-challenge-denial-ai-generated-work-registration/id=149463/ [https://perma.cc/RSH7-FW5K].

[73] See *Thaler*, 687 F. Supp. 3d at 143.

[74] *Id.*

[75] *Id.* at 150.

[76] *See id.* at 145-46.

[77] *Id.* at 146.

Midjourney, on the grounds that the illustration was not the product of human creativity.[78] The operative phrasing in the *Thaler* court's opinion – which saw the question as "whether a work *generated autonomously* by a computer system is eligible for copyright"[79] – is one that undoubtedly will recur if-and-when the Copyright Office and the courts are asked to pass judgment on a doorbell-cam video.

III. STOPPED AT THE THRESHOLD: CAN ANYONE OWN THE RIGHTS TO AUTOMATED VIDEO?

An estimated 20 percent of all American homes now have doorbell-mounted security cameras, up from just 4 percent in 2017.[80] Analysts say nearly 12 million video doorbells were sold globally during 2021.[81] Amazon's Ring is the largest market player, with upwards of 1.7 million devices sold in 2021, with Skybell Technologies in second place and Google, the maker of Nest, in third.[82] Ring was introduced into the marketplace in 2014,[83] demonstrating the relative newness of this technology, which logically accounts for the dearth of published caselaw regarding copyright ownership of the footage.

---

[78] *See* generally Blake Brittain, *US Copyright Office Denies Protection for Another AI-Created Image*, REUTERS (Sept. 6, 2023, 5:20 PM), https://www.reuters.com/legal/litigation/us-copyright-office-denies-protection-another-ai-created-image-2023-09-06/ [https://perma.cc/6AW4-QFT3].

[79] *Thaler*, 687 F. Supp. 3d at 149-50 (emphasis added).

[80] Alex Passett, *20% of American Households Now Have a Smart Video Doorbell*, IOT EVOLUTION (Sept. 29, 2023), https://www.iotevolutionworld.com/smart-home/articles/457278-20-american-households-now-have-smart-video-doorbell.htm [https://perma.cc/PTB7-FUAY].

[81] *Strategy Analytics: Amazon's Ring Remained atop the Video Doorbell Market in 2021*, BUS. WIRE (June 22, 2022, 4:01 AM), https://www.businesswire.com/news/home/20220622005023/en/Strategy-Analytics-Amazons-Ring-Remained-atop-the-Video-Doorbell-Market-in-2021 [https://perma.cc/839J-KTF6].

[82] *Id.*

[83] Jay Moye, *A brief history of the Ring Video Doorbell and its evolution over the last 10 years*, AMAZON (May 2, 2023), https://www.aboutamazon.com/news/devices/a-brief-history-of-the-ring-video-doorbell-and-its-evolution-over-the-last-10-years [https://perma.cc/KT7A-LUK4].

Highly customizable doorbell-cam/security camera set-ups like the Ring system includes options for settings like motion detection, automatic recording when someone rings a doorbell, zones and time blocks where the camera should ignore motion, motion sensitivity, and more.[84] Users have the ability to specify things like a threshold of motion to trigger the camera's recording and notifications and how long the captured clips should be stored.[85] Users can also open the apps connected to their cameras and access live views of their cameras, which can usually be screen recorded or otherwise saved.[86] A basic camera simply allows the homeowner to remotely view who is at the door, but with an added subscription fee, users can also record, store, and play back the camera's footage.[87] Since 2018, Amazon has offered a free companion app, "Neighbors," through which users of the Ring camera can publicly share images, whether for amusement or in hopes of helping catch thieves.[88] Although the app appears to be an additional option, Neighbors launched with the default setting that Ring users would be enrolled in the service, making their footage viewable to users of the app without an affirmative opt-out.[89]

---

[84] See Justine Morris, *Surveillance by Amazon: The Warrant Requirement, Tech Exceptionalism, & Ring Security*, 27 B.U. J. SCI. & TECH. L. 237, 240-41 (2021) (explaining how users can adjust devices' functionality).

[85] *Id.* at 240.

[86] *Id.*

[87] See Andrews v. Ring LLC, No. 5:20-cv-00889-RGK-SP, 2020 WL 6253319, at *1 (C.D. Cal. Sept. 17, 2020) (explaining need for users to pay subscription fee).

[88] *Morris*, *supra* note 84, at 243-44.

[89] Adrienne So, *Why We Don't Recommend Ring Cameras*, WIRED (July 9, 2023, 7:00 AM), https://www.wired.com/story/why-we-do-not-recommend-ring/ [https://perma.cc/FG95-2AHH].

Video from door-mounted cameras is a recurring feature on news websites and broadcasts, which often pick up on viral social-media trends and amplify them.[90] Sometimes, these videos are simply entertaining viewing. The *New York Post* and other mainstream news organizations reshared a video of a moose in Alaska shedding his antlers, which had received more than 335,000 online views.[91] A Georgia homeowner's post of her automated Roomba vacuum cleaner escaping out the front door garnered 28 million views on the Tik-Tok social sharing platform and was picked up by news media nationwide.[92] In other instances, the videos actually advance the telling of significant local news stories. A Pittsburgh television station used footage from a doorbell camera to capture the plume of fire from a fatal house explosion.[93] A TV news program in Tennessee aired a snippet of doorbell-cam footage of a truck skidding on ice to illustrate hazardous weather conditions after a winter storm.[94] In one recent instance, a doorbell video

---

[90] See Thomas A. Rowland, *A Quarterback, a Snapchat, and the Future of Copyright Law on the Internet*, 46 SETON HALL LEGIS. J. 811, 812 (2022) (noting that it is common for online news articles to incorporate reproductions of social-media posts, capturing the public's reaction to current events); Craig Silverman, *Lies, Damn Lies, and Viral Content*, COLUM. JOURNALISM REV. (Feb. 10, 2015), https://www.cjr.org/tow_center_reports/craig_silverman_lies_damn_lies_viral_content.php [https://perma.cc/B7UP-M5PL] ("Too often news organizations play a major role in propagating hoaxes, false claims, questionable rumors, and dubious viral content, thereby polluting the digital information stream. Indeed some so-called viral content doesn't become truly viral until news websites choose to highlight it.").

[91] Brooke Steinberg, *Rare Video of a Moose Shedding its Antlers Caught on Ring Doorbell*, N.Y. POST (Dec. 23, 2022, 1:28 PM), https://nypost.com/2022/12/23/video-of-moose-shedding-its-antlers-caught-on-ring-doorbell/ [https://perma.cc/4443-2PG4].

[92] Mary Alice Royse Ginther, '*He was Doing What He Was Born to Do;' Roomba Makes Daring Escape Attempt from Cobb Co. Home*, WSB-TV (Nov. 27, 2023, 3:35 AM), https://www.wsbtv.com/news/local/cobb-county/he-was-doing-what-he-was-born-do-roomba-makes-daring-escape-attempt-cobb-co-home/XKPPNLDJ2ZC2NA2SRPJXPX4A5Q/ [https://perma.cc/L82W-4FPD].

[93] Tori Yorgey, *Plum House Explosion: 4 Dead, 1 Unaccounted for, 3 Homes Destroyed*, WTAE (Aug. 13, 2023, 1:21 PM), https://www.wtae.com/article/plum-fire-house-explosion/44799635# [https://perma.cc/D59Q-3TMA]. Ultimately six people lost their lives in the disaster. Samantha Beech & Nouran Salahieh, *A 6th Person has Died after the House Explosion Outside Pittsburgh, Officials Say*, CNN (Aug. 16, 2023, 7:33 PM), https://www.cnn.com/2023/08/12/us/pennsylvania-deadly-house-fire-explosion/index.html [https://perma.cc/R2VC-3L4J].

[94] Brittney Baird, *Trash truck slides down icy street in Nashville*, WKRN.COM (Jan. 22, 2024, 9:52 AM), https://www.wkrn.com/news/local-news/nashville/trash-truck-slides-down-icy-street-in-nashville-video/ [https://perma.cc/PB9N-JC8N].

shared with the news media was used to raise questions about the official police account of a misfired Ohio raid that resulted in serious injuries to a 1-year-old baby.[95]

The footage is not just of value to news organizations and bloggers, but also to law enforcement. Controversially, police are increasingly gaining access to doorbell-cam video footage directly through the camera vendors, bypassing the need to obtain the homeowner's consent or secure a warrant.[96] Surveillance footage held such promise as a crime-fighting tool that some police departments partnered with manufacturers to sell doorbell cameras at a deep discount, or even give them away for free.[97] The largest market player, Amazon, faced criticism from privacy advocates for complying with police requests for doorbell-cam images without notifying the homeowner.[98] At one time, Amazon had more than 2,000 data-sharing partnership agreements with police agencies across the United States.[99] One feature enabled law enforcement agencies to push out alerts to camera users within a geographically targeted zone in hopes of obtaining images for use in detecting or solving crimes.[100] Under pressure, the company rolled out enhanced privacy protections enabling users to

---

[95] Marlene Lenthang, *'It's the Wrong House': Audio of Ohio Police Raid that Left a Baby Injured Raises New Questions*, NBC NEWS (Jan. 16, 2024, 9:06 AM), https://www.nbcnews.com/news/us-news/ohio-mayor-orders-probe-woman-alleges-police-raided-wrong-house-injure-rcna134062 [https://perma.cc/VR96-49SM].

[96] Drew Harwell, *Doorbell-Camera Firm Ring has Partnered with 400 Police Forces, Extending Surveillance Concerns*, WASH. POST (Aug. 28, 2019, 6:53 PM), https://www.washingtonpost.com/technology/2019/08/28/doorbell-camera-firm-ring-has-partnered-with-police-forces-extending-surveillance-reach/ [https://perma.cc/G9FJ-SAKY]. For a thorough discussion of the possible Fourth Amendment implications of these footage-sharing agreements, see generally Grace Egger, Ring, Amazon Calling: The State Action Doctrine and the Fourth Amendment, 95 WASH. L. REV. ONLINE 245 (2020).

[97] Alfred Ng, *The privacy loophole in your doorbell*, POLITICO (Mar. 7, 2023, 4:30 AM), https://www.politico.com/news/2023/03/07/privacy-loophole-ring-doorbell-00084979 [https://perma.cc/L53Y-EYK5]; Christopher Frascella, *Amazon Ring Master of the Surveillance Circus*, 73 FED. COMM. L.J. 393 (2021).

[98] Ashley Belanger, *Amazon Finally Admits Giving Cops Ring Doorbell Data Without User Consent*, ARS TECHNICA (July 14, 2022, 4:34 PM), https://arstechnica.com/tech-policy/2022/07/amazon-finally-admits-giving-cops-ring-doorbell-data-without-user-consent/ [https://perma.cc/WS93-QLQH].

[99] Jackson Eskay, *Amazon's Neighborhood Watch*, 24 U. PA. J. CONST. L. 1164, 1164-65 (2022).

[100] Morris, *supra* note 84, at 248.

prospectively opt out from sharing with police and even to encrypt the stored footage for greater security.[101] Ultimately, Amazon did an about-face and announced in January 2024 that it was ending its experiment with furnishing Ring footage to police without requiring a warrant.[102]

News organizations often become aware of security footage because it is being circulated on social media. Sharing a video on a social media site waives a certain degree of control over it, but copyright laws still apply, despite popular myths that socially shared content is "free for the taking."[103] Posting a video to social media means ceding certain redistribution rights to the social media platform and its users, by way of the platforms' contractual terms of use.[104] But it does not grant the world a license to republish the work outside the confines of the platform.[105] Publishers are generally advised to seek consent from the rights-holder before republishing socially shared videos, where possible.[106] But consent

---

[101] Frascella, *supra* note 97, at 396-97.

[102] Johana Bhuiyan, *Amazon Ring Says US Police will Now Need Warrant to Access User Footage*, THE GUARDIAN (Jan. 24, 2024, 4:14 PM), https://www.theguardian.com/technology/2024/jan/24/police-warrant-amazon-ring-footage [https://perma.cc/E9E7-355K].

[103] Caroline E. Kim, *Insta-Fringement: What Is a Fair Use on Social Media?*, 18 J. MARSHALL REV. INTELL. PROP. L. 102, 108 (2018); *see also* Cathay Y. N. Smith & Stacey Lantagne, *Copyright & Memes: The Fight for Success Kid*, 110 GEO. L.J. ONLINE 142, 154 (2021) (commenting, in reference to mother whose socially-shared photo of her baby became the basis of a popular meme, that the photographer "continues to own the copyright in the photograph, regardless of whether she posted it on Facebook or Instagram"); Stewart, *supra* note 31, at 95 ("[T]he First Amendment does not shield news media from the requirements of copyright law, and the [social media] photographs themselves do not become public domain through the terms of service of social networking sites.") (footnotes omitted).

[104] *See* Alison C. Storella, *It's Selfie-Evident: Spectrums of Alienability and Copyrighted Content on Social Media*, 94 B.U. L. REV. 2045, 2086 (2014) (opining that the licensing terms of social media sites "likely represent the greatest mass waiver of intellectual property rights in history.").

[105] Agence France Presse v. Morel, 769 F. Supp. 2d 295, 303 (S.D.N.Y. 2011).

[106] *See* Matt D'Angelo, *How to Avoid Copyright Infringement in the Age of Social Media*, BUS. NEWS DAILY, https://www.businessnewsdaily.com/4693-legal-image-usage.html [https://perma.cc/DYC9-F6DH] (Oct. 23, 2023) ("The best way to protect your business from copyright infringement litigation is by asking permission from original content creators before using their work . . . ."); *see also* CLAIRE WARDLE, A JOURNALIST'S GUIDE TO WORKING WITH SOCIAL SOURCES 18-20 (2016), https://web.archive.org/web/20220514165850/https://firstdraftnews.org/wp-content/uploads/2016/09/160914_FirstDraft_WhitePaper_Digital.pdf

may not always be practicable, for a variety of reasons, including the possibility that the owner of the social media account refuses to accept unsolicited messages.[107]

A. No Monkey Business: Does Automated Surveillance Video Have a "Creator?"

The experience of the "monkey selfie" case, and the Copyright Office's treatment of A.I.-generated images, demonstrates that, just because something visually appealing and economically valuable exists, that does not mean anyone "owns" the rights to it, in the eyes of copyright law. The Compendium of U.S. Copyright Office Practices, an authoritative guide to the USCO's view of the law, indicates that the government "will not register works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author."[108] Thus, it is entirely possible that the answer to "who owns doorbell-cam footage" will be "no one," at least for intellectual property purposes.[109]

If the home occupant manually activates the camera in an attempt to capture something specific, then arguably the occupant has done everything necessary to create a copyright-protected image. Choosing to take a photo of a particular subject at an advantageous time has been regarded as sufficient for an otherwise unremarkable factual work to qualify as "original" for copyright eligibility purposes.[110]

[https://perma.cc/FH9C-GSQM] (advising journalists on how to communicate with social media account-holders to obtain legally effective consent that cannot be withdrawn).

[107] *See* Kaitlyn Wylde, *How to Keep Your Ex From Sliding into Your DMs*, BUSTLE, https://www.bustle.com/life/how-to-control-who-can-dm-you-on-instagram [https://perma.cc/GG5K-SXW8] (Aug. 11, 2021) (explaining how Instagram social media account settings can be adjusted to limit which other accounts can send direct messages).

[108] U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.2 (3d ed. 2021).

[109] See Molly Torsen Stech, *Co-Authorship Between Photographers and Portrait Subjects*, 25 VAND. J. ENT. & TECH. L. 53, 79-80 (2023) (recognizing that it is possible for a photo to be owned by no one, for copyright purposes, and giving an example of a photo of a roving mountain lion captured by a doorbell camera).

[110] Mannion v. Coors Brewing Co., 377 F. Supp. 2d 444, 452-53 (S.D.N.Y. 2005); *see also* Cruz v. Cox Media Grp., 444 F. Supp. 3d 457, 465 (E.D.N.Y. 2020).

In the absence of evidence that the homeowner purposefully triggered the camera, it is doubtful that a court would recognize the installer's choice of vantage points as being a "creative" choice. The physical limitations of the device and its mounting dictate that there are a limited number of ways to aim the camera.[111] Homeowners would be hard-pressed to demonstrate that they chose a particular vantage point for artistic reasons rather than home-safety reasons. Applying the factors for originality enumerated by the district court in *Eastern America Trio Products v. Tang Electronic Corporation*,[112] the homeowner does not choose any particular photographic technique, does not control the timing (since the camera typically is activated by external forces beyond the owner's control), and does not stage the subject to be photographed. Hence, none of the classic indicia of originality appear in an automated surveillance camera image.

There are instances in which doorbell-camera owners are clearly utilizing the cameras for creative purposes in addition to any home security purposes; one company even ran a tongue-in-cheek contest encouraging people to create doorbell-cam movies of "space aliens" to win prizes.[113] If a homeowner gathers and poses her family in front of the motion-activated doorbell camera for a selfie, this would likely be viewed no differently than a photo captured via self-timer; the act of purposefully arranging the subjects would likely furnish the modicum of creativity that copyright law demands. The question is, where does that threshold of creativity lie?

People have increasingly begun disseminating doorbell-cam footage for purposes of informing or entertaining the community. A Minneapolis homeowner who posts to the Instagram and TikTok platforms under the screenname @karenthecamera has garnered hundreds of thousands of views for footage she has shared of petty street crimes, unruly dogs and other slices of neighborhood life,

---

[111] See Morris, *supra* note 84, at 239-40 (explaining "motion zone" settings that give buyers of doorbell cameras predetermined options as to what types of motion will cause cameras to send an alert).

[112] 97 F. Supp. 2d 395, 417 (S.D.N.Y. 2000).

[113] Gael Cooper, *Ring Offers $1 Million if You Spot an Alien With Your Doorbell Camera*, CNET (Oct. 5, 2023, 12:23 PM), https://www.cnet.com/home/security/ring-devices-offer-1-million-if-you-spot-an-alien-on-your-doorbell-camera/ [https://perma.cc/USJ5-SB6N].

often accompanied by humorous captions and quirky music.[114] While the raw footage may not qualify for protection, the addition of creative elements – editing, captioning and so forth – may be enough to turn the footage into a piece of protectable work. A possible comparison is to users of wearable recording devices such as GoPro cameras (sometimes called POV or point-of-view cameras), who set out to capture their own outdoor activities such as skiing and snowboarding.[115] These people intend to capture their own trajectory, but often capture those around them – or unplanned mishaps that cause their videos to go viral.[116] Even though the content may be unplanned – *i.e.*, a skier careening headlong down a hill may have limited control over where his head is pointed, and is positioning his body primarily to avoid falling rather than to capture a well-composed image – it does not seem likely that the Copyright Office would refuse to recognize the creator's ownership just because the vantage point, lighting, framing and other creative elements were spontaneous.

Copyright law recognizes that a creative assemblage of elements that are individually ineligible for copyright protection can still be a protected work, if they are arranged in a novel way.[117] However, the assembled elements must be "numerous," and the arrangement of them must be sufficiently original "that their combination constitutes an original work of authorship."[118] As one

---

[114] Sarah Esther Lageson, *Do People Caught on Ring Cameras Have Privacy Rights*?, WIRED (May 19, 2022, 8:00 AM), https://www.wired.com/story/ring-surveillance-privacy-law/ [https://perma.cc/SGP8-43AV].

[115] Beth Carter, *GoPro Cameras Help Athletes Train Smarter*, WIRED (Dec. 14, 2012, 6:30 AM), https://www.wired.com/2012/12/us-skiing-gopro-cameras/ [https://perma.cc/WJC9-3665].

[116] See, e.g., Angela Barbuti, *French Skier's Terrifying Fall into Swiss Alps Ice Chute Captured by GoPro*, N.Y. POST (Apr. 22, 2023, 10:48 AM), https://nypost.com/2023/04/22/french-skier-les-powtos-swiss-alps-fall-captured-on-gopro/ [https://perma.cc/GS6X-3YP9] (describing widely re-shared video in which skier plunged into crevasse); Dopdoc, *Bear Attack, Man is Trying to Run Away From Attacking Bear: GoPro*, YOUTUBE (Nov. 1, 2014,), https://www.youtube.com/watch?v=eK0pO79YkvY [https://perma.cc/CG68-KR49] (a 2014 amateur video of a cyclist wearing a POV camera being chased down a trail by a bear that has attracted more than 43 million views on YouTube).

[117] Gray v. Hudson, 28 F.4th 87, 101 (9th Cir. 2022); Savant Homes, Inc. v. Collins, 809 F.3d 1133, 1139 (10th Cir. 2016).

[118] Skidmore v. Zeppelin, 952 F.3d 1051, 1074 (9th Cir. 2020) (citing Satava v. Lowry, 323 F.3d 805, 811 (9th Cir. 2003)).

federal district court described it: "[A] protectable mosaic may be formed from unprotected chips, but it needs a number of them: not one or two."[119] Looking once again to the analogous situation of a work created using artificial intelligence, the Copyright Office has agreed that the creative elements added by a human in assembling otherwise-unprotected A.I.-generated images can qualify for copyright protection, though the images themselves remain ineligible.[120] So, assuming that the raw video of a bear ambling across the vantage point of an automated camera is unprotectable, the homeowner's copyright would (at most) extend to whatever creative elements the homeowner has added to transform the video into a new work, such as perhaps a voice-over narration. If a news or entertainment website were to republish only a raw video clip of the bear, stripping away the homeowner's creative additions, copyright might well not apply at all.

B. Whose Views? Peruse A Few Clues

Assuming that a doorbell-cam video crossed the threshold of originality and creativity to qualify for copyright protection, the next logical question would become: Who owns the right? This answer matters quite a bit to would-be publishers and broadcasters interested in contacting the proper person to obtain consent to redistribute the footage, since the right to consent to display or republish a work belongs to the copyright-holder.[121]

1. Contractual Agreements

While the Copyright Act assigns ownership to the creator of a work as the default assumption, ownership can be (wholly or partially) contracted away through a signed writing.[122] Of course, two parties cannot cause a statutorily ineligible work to become eligible for copyright simply by agreeing that it is. Nevertheless, the user agreements of leading home surveillance camera vendors

---

[119] Structured Asset Sales, LLC v. Sheeran, 673 F. Supp. 3d 415, 422 (S.D.N.Y. 2023).

[120] Opinion Letter from the U.S. Copyright Off. to Van Lindberg on Zarya of the Dawn (Feb. 21, 2023) (available at https://www.copyright.gov/docs/zarya-of-the-dawn.pdf [https://perma.cc/V6TA-TRQ4]).

[121] *See* 17 U.S.C. § 106 (owner has "exclusive rights" to exploit protected works in statutorily specified ways, or to authorize others to do so).

[122] 17 U.S.C. § 204(a).

precautionarily provide for the apportionment of intellectual property rights, in case any rights turn out to exist.

In its terms of service, Ring LLC, owned by Amazon, stipulates that all original content shared with Ring by its users does belong to the users, but that the act of sharing this content through services including the Ring Neighbors or Ring Community features grants Ring and its licensees an "unlimited, irrevocable, fee free and royalty-free, perpetual, worldwide right to use, distribute, store, delete, translate, copy, modify, display, and create derivative works from such Content . . . for any purpose and in any media format."[123] Once users share their footage with Ring services, Ring can give permission to other social media sites or news organizations to use the footage. Blink Video Doorbells, on the other hand, while also owned by Amazon, features no explicit policy on intellectual property rights to the footage captured by its users. Blink's terms state that purchasers grant the company the right to modify user-generated video "to generate clips," but they do not specify what – if anything – the company anticipates doing with the clips.[124]

Google Nest has similar terms to Ring, stating that customers license to Nest "all patent, trademark, trade secret, copyright or other proprietary rights" to user submitted content for publication on Nest's services.[125] Each of the major video doorbell services requires users to represent and warrant that they are the sole owners of intellectual property rights to the content that they share on the company's websites.

---

[123] *Ring Terms of Service,* RING, https://ring.com/terms [https://perma.cc/CJ26-JYFD] (last visited Jun. 20, 2024).

[124] Terms of Service, BLINK, https://blinkforhome.com/terms-of-service [https://perma.cc/8JHX-QRUP] (last updated Oct. 21, 2021).

[125] Nest Terms of Service, NEST, https://nest.com/legal/terms-of-service/ [https://perma.cc/Q3FT-NXUS] (last visited Nov. 5, 2020).

The doorbell vendors implicitly concede that any copyright interest in footage belongs to the users, but if users choose to share their footage on the vendors' social media or neighborhood-watch services, they are automatically granting the company a license to use that content without limitation. But significantly, the contractual provisions are stated in terms of a license rather than a transfer of ownership, meaning that – if ownership is meaningful for copyright purposes – the homeowner retains it.

2. Copyright-Law Possibilities

Assuming that a doorbell-cam video did qualify as a creative work of human volition, the question would become, who owns the rights? Under standard copyright principles, the manufacturer or vendor would have no claim to owning the end product, any more than the manufacturer of a traditional camera owns every photo taken with it. So, unless a contract conveys rights to the vendor, the logical starting point is that the homeowner – the person who has taken every step except for the final step of actually causing the camera to trigger – has the best claim of ownership.

The other possibility, however farfetched, is that the homeowner is a "joint author" along with any person who actually causes the camera to activate, such as a package delivery person. This argument was raised in the context of the disputed "monkey selfie" photo, as a way of recognizing that the human who made all of the predicate arrangements, David Slater, should not be wholly deprived of ownership rights just because his finger did not click the camera shutter.[126] Under this view, the mail carrier whose arrival at the front door triggers the camera might be viewed as a co-author, albeit one who acts with no intent of contributing to the creation of a work (and indeed, may be unaware that a work has been created). This view would vest the homeowner – in this scenario, playing the role of David Slater, having set up the camera and selected its settings – with joint authorship (assuming that any cognizable authorship rights exist).

---

[126] *See* Sabrina J. Salama, *Is It So Easy a Monkey Can Do It?: Joint Works and the Unintended Collaborator*, 48 HOFSTRA L. REV. 215, 242-43 (2019) (advancing joint authorship argument and explaining its limitations).

As creative as this joint authorship argument may be, it is unlikely to gain any traction in court under current understandings of copyright law. The Copyright Act defines a work of joint authorship as one "prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole."[127] Accordingly, courts will infer that joint authorship exists only where there is some manifestation of an intent to enter into a co-author arrangement.[128] In a well-publicized lawsuit over the rights to the Broadway hit musical "Rent," the Second Circuit set forth a series of factors for courts to consider in assessing whether claimants in a copyright dispute manifested an intent to create a co-author relationship.[129] These include: whether parties entered into any written agreements, whether they held themselves out publicly as collaborators, and whether each claimant exercised decision-making authority over creation of the work.[130] Under this view, the delivery driver who unwittingly activates a camera satisfies none of the critical "intent" factors, and would have no realistic claim of co-authorship (to say nothing of the moose). Moreover, nothing about the act of placing a package on a doorstep is at all creative, so the contribution of the person who triggers the camera adds no creativity, weighing heavily against co-author status. The question then would become – with echoes of the *Naruto* case – whether the homeowner can be a co-creator without a co-creator.[131]

---

[127] 17 U.S.C. § 101.

[128] *See* Aalmuhammed v. Lee, 202 F.3d 1227, 1234 (9th Cir. 2000) (stating that "putative coauthors make objective manifestations of a shared intent to be coauthors[.]").

[129] *See* Thomson v. Larson, 147 F.3d 195, 203-05 (2d Cir. 1998).

[130] *Id.*

[131] As Sabrina J. Salama explains in the context of discussing the "monkey selfie" photo, joint author status conveys a bundle of rights, including an undivided interest in ownership of the copyright, the right to share in the proceeds of any license revenue, and the right to veto any exclusive grant of rights. Salama, *supra* note 126, at 244. In light of these rights, there would be obvious practical problems with recognizing joint authorship in a passerby who happened to trigger a doorbell camera (for example, in the most clearly problematic scenario, recognizing that a person who steals packages from a front porch might be entitled to joint author rights in the video of his crime, because he activated the camera). For an example of this growing subgenre of "porch pirate" viral videos, see, 6abc Digital Staff, *Video Captures Dueling Porch Pirates Race to Steal Package Outside Pa. Home*, ABC7 (June 21, 2024), https://abc7ny.com/post/dueling-porch-pirates-sinking-spring-berks-county-lower-heidelberg-township-police/14986615/ [https://perma.cc/RT9Y-XQQU].

While resolution of this question may be years away in the context of doorbell videos, technology is already presenting a variation of this question in a different context: video gameplay streaming. It has become a popular pastime for avid video gamers to post footage of their gameplay on YouTube and other social sharing platforms.[132] This pastime – or, for some, even a paying occupation[133] – has raised intriguing questions about whether the video stream constitutes a protectable work at all, and if so, by whom.[134] Opinions vary widely. Because the player has not contributed any of the creative design decisions – the game developer has created the playable characters, and selected a finite sequence of choices and outcomes within which the players operate – it is widely believed that merely playing the game does not produce an original piece of creative work.[135] Others, however, have argued that players who record themselves while they navigate the

---

[132] *See* Dakota Foster, Protecting Video Game Gameplay Creators: A Two-Pronged Copyright Approach, 9 TEX. A&M L. REV. 711, 713 (2022) ("Every day, millions of viewers watch gameplay creators playing their favorite games.").

[133] Christopher Zoia, *This Guy Makes Millions Playing Video Games on YouTube*, ATLANTIC (Mar. 14, 2014), https://www.theatlantic.com/business/archive/2014/03/this-guy-makes-millions-playing-video-games-on-youtube/284402/ [https://perma.cc/B9MG-XWPW].

[134] *See* Tal Dadia et al., Can AI Find its Place Within the Broad Ambit of Copyright Law?, 10 BERKELEY J. ENT. & SPORTS L. 37, 49 (2021) (raising the possibility of joint authorship between machine and human, and asserting that video of people playing video games "is not simply the recording of an event – it is the active creation and simultaneous recording of an audio-visual creation resulting directly from decisions that the gamer and the video game make together").

[135] *See* Foster, *supra* note 132, at 718-20 (acknowledging that, particularly when done for profit, streaming a video game performance likely infringes copyright, but calling for gameplay performers to be given legal protection); Brianna K. Loder, *Public Performance? How Let's Plays and Livestreams May Be Escaping the Reach of Traditional Copyright Law*, 15 WASH. J.L. TECH. & ARTS 74, 77-78 (2020) (suggesting that, because gameplay videos represent a public performance of a copyright-protected work, the videos likely violate copyright); Michael Larkey, *Cooperative Play: Anticipating the Problem of Copyright Infringement in the New Business of Live Video Game Webcasts*, 13 RUTGERS J.L. & PUB. POL'Y 52, 60-61 (2015) (stating that, unless player obtains license from video game manufacturer, livestreaming gameplay violates the rightsholder's rights as a public performance of a protected work); *see also* J. Remy Green, *All Your Works Are Belong to Us: New Frontiers for the Derivative Work Right in Video Games*, 19 N.C. J.L. & TECH. 393, 411-13 (2018) (conceding that, under current understandings of copyright law, the creator of a gameplay video is likely violating the developer's rights by creating a derivative work, but arguing that players "would easily be able to claim fair use" if sued).

games are, at least, co-authors of the resulting video imagery.[136] Adherents of this latter view have pointed to the seemingly limitless possibilities that contemporary video games offer their players, meaning that each playing experience arguably is unique and distinguishable from every other.[137] By analogy, one might argue that the designer of an electronic synthesizer keyboard has also made significant creative choices that limit the keyboardist's selections – the keyboard player can generate only the sounds that the designer has chosen to offer – and yet there is no serious claim that the developer of a keyboard co-owns the music that the end user produces.[138]

But even resolving the "gameplay video" question will not conclusively settle the status of doorbell-cam footage, because there are potentially decisive distinctions. First, in a gaming video, the player makes a series of volitional choices, such as which direction to turn and which weapon to fire, that might be analogized to an actor's improvised artistic choices while performing a scripted theatrical piece, whereas the homeowner typically does not. Second, the maker of the gaming video makes a conscious choice to start and stop the camera so as to capture a particular performance, whereas the homeowner typically does not. Third, and perhaps

---

[136] *See* John Holden & Mike Schuster, *Copyright and Joint Authorship as a Disruption of the Video Game Streaming Industry*, 2020 COLUM. BUS. L. REV. 942, 983-984 (2020) (asserting that, because video game functionality has evolved to enable players to make more creative choices, decades-old caselaw refusing to recognize copyright in players' self-created videos no longer applies and players can qualify as joint authors); *see also* Tyler T. Ochoa, *Who Owns an Avatar? Copyright, Creativity, and Virtual Worlds*, 14 VAND. J. ENT. & TECH. L. 959, 990-91 (2012) (arguing that video game avatars created by players using tools and options predetermined by video game designers could legally be viewed as works of joint authorship).

[137] *See* Kyle Coogan, *Let's Play: A Walkthrough of Quarter-Century-Old Copyright Precedent as Applied to Modern Video Games*, 28 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 381, 402 (2018) (citing marketing claims of popular games that promise "limitless" possibilities); *see also* Abby L. Timmons, *Protecting the Players: An Argument for Copyright Rights in a n00b Esports Industry*, 27 SPORTS L.J. 1, 25 (2020) (arguing that "[t]he performance of the esports athlete is the personal reaction of the athlete to the circumstances he is presented with in gameplay, and his reaction – and thus, work product of gameplay footage – will be unique to a sufficient degree that originality exists[]" but conceding that a livestream, as opposed to a recording, probably fails to satisfy the Copyright Act's requirement of "fixation").

[138] *See* Holden & Schuster, *supra* note 136, at 969 (using analogy of electronic keyboards to argue that it is possible to create original work even when using a "rule-based" technology that limits creators to certain pre-designed outputs).

most importantly, the video gamer unquestionably is working with a highly original piece of copyright-eligible property intentionally designed to be creative – the video game – whereas the homeowner can identify no parallel creative co-author. The absence of creative choices will make it particularly challenging for the owner of a home security system to assert that the output of the camera qualifies as a protectable work.

IV. IN THROUGH THE SIDE DOOR: THE FAIR USE WORKAROUND

Whenever a publisher seeks to redistribute a third party's work, a series of questions arises: Is there consent from the person who holds the rights to the original work? If not, might there be legal workarounds that would legitimize borrowing some (or all) of another creator's work, even without consent?

At times, creators sue to enforce copyright against publishers who reuse photos or videos discovered online without obtaining consent or paying for a license.[139] The advent of online publishing has made it far easier to duplicate and republish another person's creative work.[140] Additionally, because images can change hands many times, it is far harder to be certain about their origin.[141] When a freelance photographer brought a sleeve of photo negatives into a twentieth-century newsroom, there was little concern that the freelancer might not own the work product. But when a photo pops up on the feed of a twenty-first-century social media account, it can be unclear whether the photo is an original, a copy, or a copy-of-a-

---

[139] *See* Melissa Eckhause, Fighting Image Piracy or Copyright Trolling? An Empirical Study of Photography Copyright Infringement Lawsuits, 86 ALB. L. REV. 111 (2022) ("In the last five years, there has been an explosion of lawsuits alleging the copyright infringement of a digital image.").

[140] *See* Jeremiah A. Armstrong, *The Digital Era of Photography Requires Streamlined Licensing and Rights Management*, 47 SANTA CLARA L. REV. 785, 786 (2007) (stating, as a result of shift to digital photographic technology, "it has never before been easier to duplicate near-perfect copies of photographic works").

[141] *See* Ayesha Syed, *Making Protection against Copyright Infringement More Accessible in the Social Media Era*, 71 FED. COMMC'N L.J. 375, 381 (2019) (commenting that the ease of re-sharing content on social media has made it effortless for third parties "to then steal that content and use it for their own commercial gain without asking for permission, attributing the work to the original author, or providing the original author with compensation").

copy-of-a-copy.[142] Although most lawsuits over non-consensual digital reproduction of images are brought by professional photographers protecting their wares, at least a few come from amateurs whose works gain a "viral" following on social media.[143]

The Copyright Act recognizes the defense of fair use when a piece of copyright-protected work is repurposed in a way that adds creative value or context to it.[144] Congress codified the defense of fair use in its 1976 revisions to the Copyright Act.[145] Courts have recognized that the ability to make a legally permissible fair use is what keeps copyright from being vulnerable to a First Amendment challenge as a government restraint on publishing.[146] Fair use is meant to advance copyright's objective of promoting the dissemination of creative work, enabling one creator to build on the work of another.[147] As the Supreme Court stated in its seminal *Campbell* case, involving a parody version of a popular song:

---

[142] *See* Goldman v. Breitbart News Network, LLC, 302 F. Supp. 3d 585, 586-87 (S.D.N.Y. 2018) (describing copyright dispute over photo that creator posted to Snapchat, which ended up being uploaded to several accounts on Twitter unconnected to original creator, after "traveling through several levels of social media platforms").

[143] *See* Eckhause, *supra* note 139, at 132, 134 (reporting results of author's study of 1,157 copyright infringement lawsuits filed during a 12-month span, which found that only 16, or about 1.4 percent, were filed by amateur content creators versus 907, or 78 percent, filed by professionals).

[144] *See* Authors Guild v. Google, Inc., 804 F.3d 202, 214 (2d Cir. 2015) ("[T]ransformative uses tend to favor a fair use finding because a transformative use is one that communicates something new and different from the original or expands its utility, thus serving copyright's overall objective of contributing to public knowledge.").

[145] 17 U.S.C. § 107.

[146] *See* Eldred v. Ashcroft, 537 U.S. 186, 219-21 (2003) (stating that fair-use defense accommodates First Amendment concerns by providing allowances for uses such as scholarship and commentary, so courts need not examine whether Copyright Act infringes free-speech rights).

[147] *See* Arica Inst., Inc. v. Palmer, 970 F.2d 1067, 1077 (2d Cir. 1992) ("The 'fair use' exception applies where the Copyright Act's goal of encouraging creative and original work would be better served by allowing the use than by preventing it."). *See also* Leval, *supra* note 9, at 1111 ("[I]f the quoted matter is used as raw material, transformed in the creation of new information, new aesthetics, new insights and understandings — this is the very type of activity that the fair use doctrine intends to protect for the enrichment of society.").

> [T]he goal of copyright, to promote science and the arts, is generally furthered by the creation of transformative works. Such works thus lie at the heart of the fair use doctrine's guarantee of breathing space within the confines of copyright, and the more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use.[148]

To determine whether a use qualifies as "fair," and thus not grounds for a successful infringement claim, courts are directed to weigh several factors: (1) the purpose for which the work is being re-used, (2) the nature of the original work, (3) the amount that the secondary user borrows, and (4) the effect of the re-use on the market for the original work.[149] The fourth "market substitute" factor is regarded as the most important, since it is directly related to copyright's central concern with protecting creators' ability to monetize their work.[150]

The statute affords extra fair-use leeway to certain preferred uses, including editorial commentary and news coverage, in recognition that these societally-beneficial uses sometimes require republishing portions of others' work.[151] The ability of journalists and commentators to make permissible fair use of other people's work may explain why there is relatively little published caselaw addressing copyright liability for redistributing socially-shared images.[152] Where such cases exist, news organizations typically

---

[148] Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 579 (1994) (citations omitted).

[149] 17 U.S.C. § 107.

[150] *See* Harper & Row Publishers, Inc. v. Nation Enterps., 471 U.S. 539, 566 (1985) (stating that whether new work undermines the market for original work is "undoubtedly the single most important element of fair use"); *see also* Armstrong, *supra* note 140, at 805 ("While all factors may be weighed, courts have consistently considered the effect on the work's market value as the most important.").

[151] 17 U.S.C. § 107; *see also* Lisa Moloff Kaplan, *Parody and the Fair Use Defense to Copyright Infringement: Appropriate Purpose and Object of Humor*, 26 ARIZ. ST. L.J. 857, 882 (1994) (stating that the fair-use provision of the Copyright Act "mandates that unlicensed uses of copyrighted works serve a socially beneficial purpose to warrant fair use protection").

[152] Since amateur videos typically have little financial investment behind them and little expectation for lucrative sales, it is also likely that claims over such videos typically settle before a published court opinion can be issued. *See* Eckhause, *supra* note 139, at 153 (summarizing findings of the study of outcomes of copyright claims filed during a recent 12-month period, which found that 49 percent had settled, while nearly 34 percent had resulted in voluntary dismissal, at least some of which also likely involved

have succeeded in making a defensible fair use by recontextualizing social media posts, at times commenting on viral posts themselves as the subject matter of news coverage.[153] For instance, a sports news website's republication of an Instagram post in which a professional tennis star announced her retirement was deemed a transformative fair use, because "embedding social media posts that incidentally use copyrighted images in reporting on the posts themselves transforms the original works, supporting a finding of fair use."[154]

---

settlements). Further, a nonprofessional with no financial investment in creating the work may be disinclined to go through the formalities necessary to initiate copyright litigation, which requires first obtaining registration through the Library of Congress. *See* Stewart, *supra* note 31, at 98-99 ("Amateur photographers, particularly those publishing photos on the Web, often do not formally file for copyrights, making it more difficult – and costly – to defend their copyrights against a secondary user."); Armstrong, *supra* note 140, at 810-11 (identifying challenges facing photographers in protecting their work, including "the inability to adequately monitor copying, the tedious and cumbersome pre-lawsuit copyright registration process, and the sheer expense of an infringement lawsuit").

[153] *See, e.g.*, Whiddon v. Buzzfeed, Inc., 638 F. Supp. 3d 342, 351-52 (S.D.N.Y. 2022) (finding that online news site was entitled to republish images shared on social media depicting social media "influencer's" motorcycle crash because the publisher's purpose – to comment on the controversy that the posts generated among people questioning the authenticity of the influencer's posts and the accident – was a transformative use); Walsh v. Townsquare Media, Inc., 464 F. Supp. 3d 570, 582-86 (S.D.N.Y. 2020) (concluding that celebrity news blog was entitled to fair use defense in a dispute over the republication of professional photographer's image of recording artist Cardi B, which blog published as part of reporting on social media post in which cosmetic company used artist's photo to launch new product); Schwartzwald v. Oath Inc., No. 19-CV-9938 (RA), 2020 WL 5441291, at *4-5 (S.D.N.Y. Sept. 10, 2020) (holding that news website's republication of freelance commercial photographer's candid photo of actor Jon Hamm was a transformative fair use because news site used photo for purpose of commenting on public fixation with images of Hamm's genital area, and altered photo humorously to conceal actor's groin).

[154] Boesen v. United Sports Publ'ns, Ltd., 20-CV-1552 (ARR) (SIL), 2020 WL 6393010, at *5 (E.D.N.Y. 2020) (italics omitted).

Still, news organizations do not automatically receive a free pass to reuse the work of others.[155] Copyright claims against the news media can and do succeed, including those involving the reuse of images shared online.[156] For example, in a case that set alarms ringing in newsrooms across the country, a federal district judge decided in *Goldman v. Breitbart News Network, LLC*, that news organizations could be held liable for copyright infringement for merely embedding a social-media post containing an indisputably newsworthy photograph on their websites.[157] In another instance, a court declined to find fair use when a media company republished a bystander's social-media photo of police apprehending a suspected terrorist on a New York street, because the photo was merely "an illustrative aid" and was neither transformative nor necessary to tell the story.[158]

Playing out a hypothetical copyright infringement suit in light of the statutory fair-use factors, a news or entertainment medium that redistributes doorbell-cam footage would typically have a strong basis to assert a fair-use defense.

---

[155] *See, e.g.*, *Harper & Row*, 471 U.S. at 560-61 (concluding that defendant's republication of protected work for purposes of news reporting is just one non-conclusive fair use consideration, and that statutory fair-use factors still must be satisfied); Swatch Grp. Mgt. Servs. Ltd. v. Bloomberg L.P., 756 F.3d 73, 85 (2d Cir. 2014) ("[A] news reporting purpose by no means guarantees a finding of fair use.").

[156] *See* Aleanna-Terese B. Siacon, *How 'Worthy' is Newsworthy? Re-Evaluating Fair Use in the Social Media Age*, 68 WAYNE L. REV. 287, 294 (2022); *see, e.g.*, Golden v. Michael Grecco Prods., Inc., 524 F. Supp. 3d 52, 61-64 (E.D.N.Y. 2021) (finding that entertainment blogger's use of celebrity photo found online was not a legally defensible fair use, as blogger added no transformative elements or contextualization, but rather, merely "appropriated the image to illustrate the subject of his reporting"); Barcroft Media, Ltd. v. Coed Media Grp., LLC, 297 F. Supp. 3d 339, 351-55 (S.D.N.Y. 2017) (concluding that operator of celebrity gossip websites was not entitled to fair use defense for republication of paparazzi photos found online, because websites "displayed the Images for the very purpose for which they were originally intended" and undermined market for original images).

[157] *See generally* Goldman v. Breitbart News Network, LLC, 302 F. Supp. 3d 585 (S.D.N.Y. 2018); *see also* Marta Rocha, *The Brewing Battle: Copyright vs. Linking*, 35 BERKELEY TECH. L.J. 1179, 1181 (2020) (commenting on significance of Goldman holding and observing that such stringent rulings "pose a threat to linking techniques as they exist today, thus undermining the way internet users find information" and that the "destruction of fundamental reference techniques threatens the basic navigability of the web").

[158] Cruz v. Cox Media Grp., LLC, 444 F. Supp. 3d 457, 471 (E.D.N.Y. 2020).

The "purpose" factor will tilt toward the republisher, first, because news coverage and commentary are statutorily preferred uses,[159] and second because the very existence of the video is often itself an element of what is being commented on.[160] Fair use is most easily established when the work being republished or excerpted does not merely illustrate the subject but *is* the subject, such as a film critique.[161] To illustrate, a federal judge in New York found that a television network did not infringe copyright by re-airing a portion of a 45-minute-long video of a woman giving birth in a hospital delivery room that her partner streamed live on Facebook.[162] The court deemed the network's use to be "transformative" because, along with sharing an excerpt of the video, broadcasters offered commentary about the phenomenon of people livestreaming intimate personal moments, which added new-and-different contextualization to the original work.[163]

In the context of a home security video, the example above of broadcasters redistributing footage of a cat activating a doorbell camera to alert its owner to open the door[164] is a paradigmatic example of a contextually transformative use, because the novel way in which the doorbell camera was being used is itself the story. Indeed, because the original purpose of doorbell-cam footage is to capture potential security threats to the home, repurposing the footage to tell a news story or share an entertaining slice of life

---

159 17 U.S.C. § 107.

160 *See e.g.*, Núñez v. Caribbean Int'l News Corp., 235 F.3d 18, 22 (1st Cir. 2000) (finding that news organization made defensible fair use in republishing racy photos of beauty pageant winner as part of covering controversy over disclosure of the photos, because "the pictures were the story"); *see also*, Emily Bloch, *'Oh boy, oh dear': Jacksonville Newlyweds' Doorbell Camera Footage Goes Viral*, FLA. TIMES-UNION (JULY 15, 2021, 11:20 AM), https://www.jacksonville.com/story/news/local/2021/07/15/jacksonville-couple-goes-viral-ring-doorbell-footage-wedding-night-video/7976965002/ [https://perma.cc/7THL-AQVB] (reporting on local couple whose doorbell camera footage of newlywed husband struggling despite back injury to carry bride across threshold was virally shared on numerous social media accounts).

161 *See Barcroft Media, Ltd.*, 297 F. Supp. 3d at 352 ("Display of a copyrighted image or video may be transformative where the use serves to illustrate criticism, commentary, or a news story about that work.") (emphasis in original).

162 Konangataa v. Am. Broad. Cos., 16-cv-7382 (LAK), 16-cv-7383 (LAK), 16-cv-7472 (LAK), 2017 WL 2684067, at *1 (S.D.N.Y. June 21, 2017).

163 *Id.*

164 Ross, *supra* note 1.

arguably is an inherently transformative use.[165] As one court observed in the context of a fair-use dispute, "[u]sing a photo for the precise reason it was created does not support a finding that the nature and purpose of the use was fair."[166] Since the "precise reason" for making a security camera recording is not storytelling, the homeowner will have an especially difficult time showing that a republisher added no new context or meaning to the original. The more that the republisher adds in the way of commentary or reframing, the more defensible the use will be, as opposed to simply redistributing a video to call attention to what it shows.[167] Courts are generally inclined to find a fair use defensible when the challenged use serves a new-and-different purpose from the original, even where there is no physical transformation to the form or appearance of the original.[168] In a dispute over the republication of celebrity photos, a federal court in New York offered an illustrative hypothetical of a legitimate transformative use that fits the typical doorbell-cam scenario quite neatly: "For instance, a news report about a video that has gone viral on the Internet might fairly display a screenshot or clip from that video to illustrate what all the fuss is about."[169]

---

[165] *See* Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 579 (1994) (stating that "central purpose" of the first fair-use factor is to examine whether purportedly infringing use "adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message").

[166] BWP Media USA, Inc. v. Gossip Cop Media, Inc., 196 F. Supp. 3d 395, 407 (S.D.N.Y. 2016) (citing Fitzgerald v. CBS Broad., Inc., 491 F. Supp. 2d 177, 185 (D. Mass. 2007).

[167] *See* Stewart, *supra* note 31, at 105-06 (discussing example of magazine's infringing republication of luxury car photo, which was used merely to depict appearance of car, the same purpose and message as the original photo: "This kind of use adds nothing to the original use, is not commentary, is not criticism, is not newsworthy on its own, and thus is not transformative.").

[168] Jiarui Liu, *An Empirical Study of Transformative Use in Copyright Law*, 22 STAN. TECH. L. REV. 163, 207 (2019). Based on a statistical analysis of outcomes in recent fair-use cases, Liu suggests that the question of whether the purportedly infringing use is transformative "has gradually come to dominate fair use analysis" and has "essentially turned the four-factor test into a one-factor test." *Id.* at 204. *See also* Paris Sanders, *ART IS BIG BUSINESS: Fine Art, Fair Use, and Factor Four After Goldsmith*, 29 UCLA ENT. L. REV. 59, 71 (2021) (opining that transformative-use inquiry has "morphed into the fulcrum of all fair use cases").

[169] Barcroft Media, Ltd. v. Coed Media Grp., LLC, 297 F. Supp. 3d 339, 352 (S.D.N.Y 2017).

The "nature" factor likewise will lean in the republisher's favor, because a doorbell-cam video by its nature is not highly creative.[170] Courts have assigned varying value in the fair-use balancing analysis based on whether a photo reflects significant creativity or is purely factual in nature.[171] A video that merely captures whatever passes by a house, with little-to-no creative investment by the video's owner, will be entitled to relatively thin protection.[172] Even as compared with more commonplace types of viral amateur video–those shot with smartphone cameras–establishing a successful infringement claim for a doorbell video would be uniquely difficult, because the smartphone videographer generally took intentional steps to create an appealing video, while the doorbell-cam installer did not.

---

[170] *See* Moriarty, *supra* note 70, at 46 ("Copyright law offers stronger protection to expressive, original, and creative content than it does to work containing purely factual information."); *see also* Cambridge Univ. Press v. Patton, 769 F.3d 1232, 1268 (11th Cir. 2014) ("[B]ecause works that are highly creative are closer to the core of copyright — that is, such works contain the most originality and inventiveness — the law affords such works maximal protection, and hence it is less likely that use of such works will be fair use."); Fitzgerald v. CBS Broad., Inc., 491 F. Supp. 2d 177, 187 (D. Mass. 2007) (stating that "creative works justify stronger copyright protection and are less amenable to fair use" than works of a purely factual nature).

[171] *See* New Era Publ'ns Int'l v. Carol Publ'g Grp., 904 F.2d 152, 157 (2d Cir. 1990) ("[T]he scope of fair use is greater with respect to factual than non-factual works."); *Fitzgerald*, 491 F. Supp. 2d at 188 (holding that freelance news photographer, who captured image of mobster being escorted out of police station, "exercised no more than the minimum authorial decision-making necessary to make a work copyrightable" and stating: "Creativity for the purposes of fair use is harder to establish than threshold copyrightability.").

[172] *See* Daniel Fox, *Harsh Realities: Substantial Similarity in the Reality Television Context*, 13 UCLA ENT. L. REV. 223, 233 (2006) (drawing contrast between "highly original works entitled to the broadest protection at one end, and works of a primarily factual nature, to which only 'thin' protection is afforded"); *see also* Swatch Grp. Mgt. Servs. Ltd. v. Bloomberg L.P., 756 F.3d 73, 89 (2d Cir. 2014) (recognizing that company's recorded conference call to discuss its financial performance with investors was factual in nature and entitled only to thin copyright protection, because "the purpose of the call was not in any sense to showcase . . . forms of expression"); SMS Grp. Inc. v. Pharmaaid Corp., 23-CV-1777 (EK) (TAM), 2023 WL 6929653, at *4 (E.D.N.Y. Oct. 19, 2023) (finding, in reference to photos of common drugstore products taken against plain white background, that "any resulting copyright protection would be thin, given the scant creativity involved").

The wild-card consideration is whether amateur surveillance video has–or in the future, will have–any meaningful commercial value. In the ordinary case, the answer seems clearly to be "no." Ordinarily, security footage will be uninteresting and of minimal quality as compared with professional videography. There is no conspicuous evidence that people are widely buying and selling licenses for doorbell-cam footage on any sort of commercial marketplace.[173] The theoretical possibility that, in the future, someone might pay money for a particular work is not evidence that a market exists, for purposes of fair use; what matters, in the words of the Second Circuit, is "[o]nly . . . traditional, reasonable, or likely to be developed markets."[174] Nor is there any systematic arrangement by which companies such as Google and Amazon compensate users of their products for licensing the output of the cameras back to the vendors, as might be expected if the videos were thought to have market value; imagine, for instance, the customer outcry if manufacturers of ordinary cameras, such as Canon or Nikon, built into each camera an automatic royalty-free license for the vendors to republish whatever images the photographer shot. One factor that courts have considered in assessing the marketplace impact of a putative fair use is whether the copyright plaintiffs had a history of monetizing their works or

---

[173] *See* Jennifer E. Rothman, *Copyright's Private Ordering and the "Next Great Copyright Act"*, 29 BERKELEY TECH. L.J. 1595, 1607 (2014) (collecting cases addressing marketplace-harm factor under fair-use analysis, and concluding that "[w]hen there is a general industry practice to license copyrighted works in a particular context and a defendant fails to do so, courts point to the existence of an overall licensing market as evidence that a defendant's failure to license causes or will cause market harm"); *see also* Estate of Smith v. Graham, 799 Fed. Appx. 36, 39 (2d Cir. 2020) (unpublished) (stating that lack of evidence of "active market" for spoken-word recording briefly sampled in contemporary pop song was factor weighing against claim of infringement and in favor of fair use).

[174] Am. Geophysical Union v. Texaco Inc., 60 F.3d 913, 930 (2d Cir. 1994). Of course, fair use cannot be defeated merely by the circular argument that the secondary user might have paid to license the work absent the ability to make a fair use of it, because that argument will exist in every fair use case and could become the exception that swallows the rule. The proper inquiry is not whether one particular user might have wanted the work enough to pay for using it, but whether a market exists with which the secondary use interferes. *See, e.g.*, Bouchat v. Balt. Ravens Ltd. P'ship, 619 F.3d 301, 311 (4th Cir. 2010) (considering, as a factor weighing against fair use of copyrighted National Football League team logo, the industry custom that the league is known to license its logo for commercial productions, but that the defendant filmmakers failed to seek a license).

showed an intent to do so.[175] As one commentator has written: "The only 'potential' markets relevant to fair use are those the plaintiff is interested in exploiting. . . . Thus, when a copyright owner fails to provide tangible evidence of an intent to exploit *any* market, there is no 'potential' market harm[.]"[176] Except perhaps for the very rare homeowner who also happens to be a commercial videographer, such evidence rarely will exist in the case of doorbell-cam footage. As of now, it appears that a homeowner whose social-media video of animal antics is redistributed by a news organization would have difficulty establishing much economic loss.

However, a market arguably may be developing, as vendors of security-cam technology seek to monetize views of unusually entertaining clips on video-sharing sites such as YouTube. Indeed, during 2022, Amazon launched a syndicated television program, hosted by acclaimed comedian Wanda Sykes, that curates colorful or embarrassing moments caught on Ring doorbell cameras as a form of entertainment.[177] Amazon also maintains a widely viewed YouTube channel ("RingTV") with nearly 450,000 worldwide subscribers that boasts of offering "the best home security videos caught on our cameras – from porch pirates and package theft at the front door to unexpected critters in the backyard and more."[178]

---

[175] For example, the Ninth Circuit found in favor of musical artists who had commissioned photos of their clandestine wedding for personal use only, and were aggrieved when a magazine publisher, Maya, obtained leaked copies of the photos and published them. *See generally* Monge v. Maya Mags., Inc., 688 F.3d 1164 (9th Cir. 2012). Although the plaintiffs had no intention of publishing those particular photos, the court concluded that a market did exist, looking to the plaintiffs' own history: "The couple is undisputedly in the business of selling images of themselves and they have done so in the past and Maya itself paid $1,500 for prior photos. Maya's purchase of the pictures unequivocally demonstrates a market for the couple's copyrighted pictures." *Id.* at 1181. Cf. Lewis Galoob Toys, Inc. v. Nintendo of Am., Inc., 964 F.2d 965, 972 (9th Cir. 1992) (rejecting Nintendo's infringement claim against technology company that sold devices enabling users to add features and functions to Nintendo video games, where there was no evidence Nintendo had ever sold altered versions of its games or had any intention of doing so: "The existence of this potential market cannot be presumed.").

[176] Stephen McIntyre, *Private Rights and Public Wrongs: Fair Use as a Remedy for Private Censorship*, 48 GONZ. L. REV. 61, 102 (2012).

[177] Peter White, *Wanda Sykes To Host Syndicated Viral Video Show Featuring Ring Doorbell Technology From MGM*, DEADLINE (Aug. 11, 2022, 10:00 AM), https://deadline.com/2022/08/wanda-sykes-host-syndicated-viral-video-show-ring-doorbell-technology-1235089510/ [https://perma.cc/C2SW-PFP2].

[178] RingTV, YOUTUBE, https://www.youtube.com/@ring [https://perma.cc/E8HJ-MVDP].

One video, self-explanatorily titled "This Bear Messed with the Wrong Chicken Coop," has been viewed more than 7 million times.[179] Some of the segments even include interviews with the homeowners and their family members, commenting on the videos and the experiences reflected in them, evidencing that the homeowners have consented for their videos to be repackaged as entertainment.[180] Although the cameras entered the marketplace for crime control, manufacturers have started to recognize that non-crime footage is not just a byproduct but is perhaps a primary product, and have begun marketing the cameras as a way of recording memorable life experiences.[181] If evidence developed that media organizations are paying money to license doorbell-cam photos, that might be enough to establish a cognizable market harm for purposes of the most significant fair-use factor.[182] Thus, while the fair-use analysis today seems decidedly weighted toward the republisher – even assuming that a protectable copyright interest exists at all – the analysis could change if the marketplace begins treating surveillance video as an economically valuable commodity.[183]

---

[179] RingTV, *This Bear Messed with the Wrong Chicken Coop*, YOUTUBE (Apr. 19, 2021), https://www.youtube.com/watch?v=H6_YpVBzqNw [https://perma.cc/GP3H-7EWJ].

[180] Pamela B. Rutledge, *Ring Camera Security Videos as Entertainment*, PSYCH. TODAY (Aug. 26, 2022), https://www.psychologytoday.com/nz/blog/positively-media/202208/ring-camera-security-videos-entertainment [https://perma.cc/8PGY-MZYV].

[181] *See* Ring ANZ, *Capture Life's Moments with Ring*, YOUTUBE (Jan. 17, 2024), https://www.youtube.com/watch?v=HJu3xofd_NI [https://perma.cc/PK6G-FQFV] (an Amazon advertising campaign encourages consumers to install Ring devices to "capture life's moments"); Ring ANZ, *Never Miss a Special Moment with Ring*, YOUTUBE (Jan. 17, 2024), https://www.youtube.com/watch?v=gmPDLMKsFDY [https://perma.cc/7XPR-Y5ZK] (an Amazon advertising campaign encourages customers to install Ring devices to "never miss a special moment," with footage including a doorstep marriage proposal)

[182] *See* Fitzgerald v. CBS Broad., Inc., 491 F. Supp. 2d 177, 189 (D. Mass. 2007) (finding that freelance photojournalist's history of having licensed newsworthy photographs to other media outlets established that market existed for purposes of copyright infringement claim against television network that used photojournalist's work without consent).

[183] *See* Harper & Row Publishers, Inc. v. Nation Enterps., 471 U.S. 539, 542-43 (1985) (considering, as a factor in establishing that news magazine did not make a defensible fair use of a book excerpt, that a competing magazine had contracted to pay $25,000 for an exclusive excerpt and then canceled payment after competitor preemptively published leaked version).

CONCLUSION

Going back to first principles, the foundational purpose of copyright law is to incentivize the creation of societally-beneficial creative works.[184] By that measurement, there is no compelling public policy imperative for extending copyright protection to videos recorded by doorbell cameras.[185] A homeowner installs a security camera for safety, not to create a marketable film, which in most instances is the result of unplanned happenstance (*e.g.*, a bear or a moose happens to activate the camera).[186] A homeowner does not need copyright protection as an incentive to install a home security camera, in the way that a freelance photojournalist needs copyright protection as an incentive to go into the field – even, at times, into dangerous situations – to capture a story.[187] Nor do manufacturers of surveillance cameras need the incentive of generating protectable intellectual property, which is merely a byproduct of a safety-motivated technology. This safety motivation makes the policy argument for copyright protection even weaker than for artificial intelligence, which by contrast is purposefully designed to

---

[184] *See id.* at 558 ("[T]he Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas.").

[185] *See* Daniel J. Gervais, *The Machine as Author*, 105 IOWA L. REV. 2053, 2105-06 (2020) (commenting, in the context of debate about copyright eligibility of machine-created works, that "machines need no legal or financial incentives to run their code"); *see also* Siacon, *supra* note 155, at 307 (asserting that rigorous copyright protection is not needed to incentivize people to share images on social media, because sharing "has become such an ingrained part of present social norms").

[186] *See* Siacon, *supra* note 155, at 302 (observing that, unlike professional photojournalists who set out purposefully to create images to earn a living, "for individuals with a limited connection to the media industry, newsworthy encounters are more likely to stem from surprising or unusual occurrences").

[187] *See Fitzgerald*, 491 F. Supp. 2d at 189 (commenting, in copyright dispute involving television station's republication of freelancer's news photograph without consent, that "[i]t is hard to imagine that freelance photojournalists would continue to seek out and capture difficult to achieve pictures if they could not expect to collect any licensing fees"); *see also* Swatch Grp. Mgt. Servs. Ltd. v. Bloomberg LP, 756 F.3d 73, 91 (2d Cir. 2014) (stating, in context of copyright dispute over business journalists' republication of company's earnings call with investors, that company did not need copyright protection to incentivize creating such recordings: "[T]he possibility of receiving licensing royalties played no role in stimulating the creation of the earnings call.").

produce creative works.[188] Indeed, if videos shot by automated cameras are being used to fill newscasts and websites as a substitute for purchasing videos shot by human videographers, the Copyright Act's policy imperatives arguably counsel *against* recognition for works resulting from automation because they can undermine the market value of human-created work.[189]

Inevitably, Congress, the Copyright Office, and the courts will all have to rethink what it means to create original works, as technology evolves in its ability to autonomously generate music, movies, and even "artificial humans."[190] A prolonged Hollywood labor dispute, which saw actors and writers go on strike throughout much of 2023, centered largely on the extent to which producers should be allowed to replace writers and performers with computer-generated simulations.[191] The pressure on policymakers to recognize works produced by automation as worthy of protection will only intensify as A.I. technology improves its capacity to mimic human creative output.

There is value in achieving clarity around the question of who owns the footage recorded by doorbell cameras. News organizations are increasingly reliant on viral online content, or acts of "citizen journalism," to supplement the thinning ranks of full-time

---

[188] *See* Myers, *supra* note 68, at 23 (arguing that humans develop and use A.I. technologies for creative purposes and might respond favorably to copyright incentives, even though the machines themselves do not).

[189] *See* Gervais, *supra* note 185, at 2106 ("[C]reating incentives to have more productions in the literary and artistic field made by machines could in fact pose a threat to (human) progress."); *see also* David De Cremer et al., *How Generative AI Could Disrupt Creative Work*, HARV. BUS. REV. (Apr. 13, 2023), https://hbr.org/2023/04/how-generative-ai-could-disrupt-creative-work [https://perma.cc/MM6D-6T2N] (envisioning potential scenario under which "human writers, producers, and creators are drowned out by a tsunami of algorithmically generated content, with some talented creators even opting out of the market"); *but see* Moriarty, *supra* note 70, at 47 (explaining that creators "are not guaranteed a market for their work" and that it is not enough to establish infringement to show that a new work out-competes the old work to satisfy the demands of the marketplace); Dadia et al., *supr*a note 134, at 79 (arguing that refusal to recognize copyright protection in A.I.-created works is detrimental to the evolution of creativity: "Lack of copyright is a disincentive to fund projects related to AI development if the opportunity to commercially exploit the finished product is undercut.").

[190] *See* Dadia et al., *supra* note 134, at 39-40 (stating that video production technology is evolving to create lifelike video avatars that "look, sound, and behave like humans").

[191] Angela Watercutter, *Tech Disrupted Hollywood. AI Almost Destroyed It*, WIRED (Nov. 10, 2023, 9:00 AM), https://www.wired.com/story/hollywood-actors-strike-ai-future-distruption/ [https://perma.cc/KZ9R-CRYT].

professional journalists.[192] Dependence on low-cost or no-cost video footage predictably will continue to grow as newsrooms shrink staffing in response to diminishing revenue from advertising and subscriptions.[193] Social media users are often the first to alert the public to newsworthy crimes or natural disasters, and their videos may be the only contemporaneous record of events that come and go before journalists can reach the scene.[194] While the fair use defense will offer substantial protection for reusing newsworthy video from automated cameras, fair use is an intensely fact-specific, case-by-case judgment and is no substitute for the predictability of bright-line categorical rules.[195] For good reason, a federal appeals court long ago characterized the fair-use doctrine as "the most troublesome in the whole law of copyright[.]"[196] Because the first set of "eyes" on the scene of news events will, increasingly, be automated eyes as surveillance cameras proliferate and salaried journalists dwindle, news organizations would benefit from clarity

---

[192] *See* Jesse Holcomb, *On TV, Few Amateur Journalists Get Credit for Their Contributions to the News*, PEW RSCH. CTR. (June 5, 2014), https://www.pewresearch.org/short-reads/2014/06/05/on-tv-few-amateur-journalists-get-credit-for-their-contributions-to-the-news/ [https://perma.cc/56GT-9BCV] (stating that "ordinary citizens are increasingly functioning as on-scene reporters" as a result of downsizing within news organizations).

[193] *See* Oliver Darcy, *News Outlets Slash Nearly 2,700 Jobs this Year — the Highest Number Since 2020 — Contributing to Alarming News Deserts*, CNN (Dec. 14, 2023, 7:01 AM), https://www.cnn.com/2023/12/14/media/news-outlets-slash-2700-jobs/index.html [https://perma.cc/C4XE-TBR5] (reporting "alarming" statistics from outplacement firm that news organizations eliminated 2,700 jobs during 2023, despite strength in U.S. economy overall); Eric Wemple, *Could the Local News Crisis Get Any Worse? Look at Scranton*, WASH. POST (Dec. 14, 2023, 7:00 AM), https://www.washingtonpost.com/opinions/2023/12/14/alden-pennsylvania-scranton-family-newspaper/ [https://perma.cc/4NK6-97N2] (citing studies showing that nearly 2,900 newspapers have shuttered or merged out of existence since 2005, and that two-thirds of newspaper jobs have been eliminated over that period).

[194] *See* Siacon, *supra* note 155, at 288 ("[N]ewsrooms now rely on social media as an integral newsgathering tool and source-finding tool – especially when important news breaks and the first visuals are ones that have been shared onto social media by users at the scene."); *see also id.* at 298 ("[N]ewsrooms across the country are shrinking, and they often lack the resources to effectively chase important stories or keep up with the fast-paced social media-driven news cycle.").

[195] *See* Rowland, *supra* note 90, at 826 (commenting that fair use "calls for a highly fact-specific analysis" that "would not provide any structural remedy" to questions about publishers' ability to republish others' posts from social media); Smith & Lantagne, *supra* note 103, at 161 ("Fair use involves a case-by-case, fact-specific analysis that sometimes can appear to make outcomes unpredictable.").

[196] Dellar v. Samuel Goldwyn, Inc., 104 F.2d 661, 662 (2d Cir. 1939).

as to when it is legal to re-share video generated by automated cameras and circulated on social media.