Authorship and the Human Editor of LLM Outputs

A Proposal Based on a Comparative Reading of the 2026 National Reports

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Introduction

The eighteen national reports submitted to ALAI 2026 in The Hague together describe a copyright system under unusual pressure. The pressure is not, as it might first appear, the pressure of new doctrine displacing old; it is the pressure of old doctrine being asked to do work beyond its original design. When a human author runs a draft through a large language model, edits the resulting text, and presents the final product as her own, the question that copyright law must address remains the same as it has always been: is she considered the author? While the question is old, the entity whose output she is editing is not. It lacks any authorial interest of its own, and the system we use to share authorship among collaborators assumes the presence of two human minds.

My contribution today argues that the answer lies not in the creation of new doctrine but in the disciplined application of existing doctrine to a genuinely new set of facts. More precisely, I suggest that authorship of an LLM-edited text requires editing of a kind that *displaces* the machine's expressive choices rather than *refining* them. I call this the *collaborative writing standard and* propose three diagnostic criteria for evaluating whether it has been met: structural displacement, voice, and expressive specificity. The visible convergence between American copyright doctrine, the European Union's harmonised "author's own intellectual creation" (AOIC) standard, and the eighteen national traditions surveyed in the national reports reinforces the claim that the standard reflects a general principle of authorship rather than a contingency of either system.

A word on scope is needed at once, because the standard I propose governs the thickness, not the existence, of protection.[1] Copyright exists in the contributions of a human who provides original expression to a text that is assisted by an LLM or who arranges human and machine-generated material in a sufficiently creative way, at the ordinary AOIC threshold and without regard to the collaborative writing standard. That protection is narrow: it covers

[1] The term was used, e.g., by the United States Supreme Court Feist, where it noted that "the copyright in a factual compilation is *thin*," Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 349 (1991). For a discussion, see Jane C. Ginsburg, *No Sweat? Copyright and Other Protection for Works of Information After Feist v. Rural Telephone*, 92 Colum. L. Rev. 338 (1992).

her own expression, her selection and arrangement, and leaves the machine-generated substrate in the public domain. The collaborative writing standard poses a different, more difficult question: When is the human's engagement sufficient to give her a copyright of normal thickness in the work as a whole, the residual machine-generated material included, rather than a thin copyright in her discrete contributions alone? Displacement is a condition of that thicker claim, not a condition of protection in and of itself.

This text proceeds as follows. Part I sets out the convergent core that the eighteen reports identify on the human-authorship requirement. Part II isolates recent doctrinal developments in Munich and Frankfurt that supply the substantive and procedural mechanics of the standard's application. Part III addresses the *Painer* tension, on which the European framework's distinctive contribution turns. Part IV proposes the collaborative writing standard and its three diagnostic criteria. A short conclusion returns to the residual problem of the unprotected middle, on which the reports also converge.

I. The Convergence

Perhaps the most striking part of the national reports is the following. On the issue of whether copyright in AI-assisted output requires human authorship, the eighteen reports converge to an extent unusual in comparative IP scholarship. Each of them maintains, on different statutory, doctrinal and constitutional grounds, that machine-generated output is not protected.[2] None sets a numerical threshold. All treat the originality question as qualitative and case-by-case. The vocabulary differs across traditions, but the operative test tracks the same intuition: copyright attaches where free and creative choices through which a human author's personality finds expression are visible in the resulting work.

Admittedly, the textual hooks vary. The EU reports invoke the AOIC standard as elaborated in *Infopaq*, *Painer*, *Cofemel*, and the December 2025 ruling in *Mio and Others*.[3] Several rapporteurs anchor the requirement in domestic statutory language identifying the "author" or "creator" as a natural person: the Czech, Hungarian, Polish, Slovenian, and Italian

[2]ALAI Congress 2026 The Hague, National Reports of Argentina, Croatia, Czechia, Finland, Germany, Greece, Hungary, Italy, Mexico, Netherlands, Norway, Poland, Portugal, Slovenia, Sweden, Switzerland, United Kingdom and United States, Q11 (collectively, ALAI 2026 National Reports), all available via https://alai2026.org. Subsequent citations refer to specific reports by country and question number.

[3]Case C-5/08 *Infopaq International A/S v Danske Dagblades Forening* EU:C:2009:465; Case C-145/10 *Painer v Standard Verlags GmbH* EU:C:2011:798; Case C-683/17 *Cofemel v G-Star Raw* EU:C:2019:721; Joined Cases C-580/23 and C-795/23 *Mio and Others* EU:C:2025:941 (4 December 2025).

reports do so explicitly.[4] Italy is, on present count, the only EU jurisdiction to have legislated directly on the point: Law of 23 September 2025, no. 132 amends article 1 of the Italian Copyright Act to confirm that "works of human authorship having a creative nature ... even when created with the aid of artificial intelligence tools" are protected "provided that they constitute the result of the author's intellectual work."[5] Outside the EU, the structural argument runs through different materials. The United States reaches the same conclusion through statutory interpretation reinforced by *Thaler v Perlmutter*.[6] Mexico has constitutionalised the requirement: in *amparo* 6/2025, the Second Chamber of the Suprema Corte held unanimously that copyright is a human right exclusive to natural persons, that articles 12 and 18 of the Federal Copyright Act are constitutional, and that protection of artificial entities cannot be analysed under the human right to legal equality because human and artificial entities have incompatible characteristics.[7] The Argentine report reaches the same conclusion through a constitutional reading of "lo propio" as the foundation of *originalidad*.[8] Switzerland develops its analysis through *apport individuel* and the burden-of-proof rule of article 8 of the Swiss Civil Code.[9] The United Kingdom applies the AOIC standard, as inherited and affirmed in *THJ Systems v Sheridan*, with the open question of section 9(3) CDPA addressed below.[10]

But there is convergence on the substance, if not on the instruments. Each tradition has arrived at a structurally equivalent test through its own materials. Each treats the test as an existing one being applied to new facts rather than a new one being created. Which is itself worth noting. In some instances, the literature has indicated that new doctrine will be necessary for AI authorship. The reports suggest otherwise collectively: Courts and CMOs in eighteen jurisdictions are doing the work with the doctrinal tools they already have.[11]

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[4] Czechia National Report Q11 (citing § 5 of the Czech Copyright Act); Hungary National Report Q11 (citing s 1(3) of the Hungarian Copyright Act); Poland National Report Q11 (citing art 8(1) of the Polish Copyright Act); Slovenia National Report Q11 (citing art 10 of the ZASP); Italy National Report Q11.

[5] Legge 23 settembre 2025, n. 132 (It.), modifying art 1 of Legge 22 aprile 1941, n. 633 [Italian Copyright Act]; Italy National Report Q9 and Q11. The same statute also added a new art 70-septies addressing TDM and AI training, on which see Italy National Report Q9.

[6] *Thaler v Perlmutter* 130 F.4th 1039 (DC Cir 2025), cert denied, No 25-449 (US, 2 March 2026); USA National Report Q11.

[7] SCJN, Segunda Sala, *amparo* 6/2025 (Mex.); Mexico National Report Q11. The unanimous holding rests on three pillars: copyright as a human right exclusive to natural persons; the constitutional limitation as objective, reasonable, and compatible with Berne and the USMCA; and the inapplicability of equality analysis to compare natural and artificial entities.

[8] Argentina National Report Q11.

[9] Switzerland National Report Q11.

[10] *THJ Systems Ltd v Sheridan* [2023] EWCA Civ 1354; United Kingdom National Report Q11.

[11] For representative arguments that AI authorship requires a new doctrinal framework, see Annemarie Bridy, 'Coding Creativity: Copyright and the Artificially Intelligent Author' (2012) 2012 Stan Tech L Rev 5; Andres

Second, the rapporteurs converge on what does *not*, by itself, suffice. The Croatian, Czech, Finnish, German, Mexican, Polish, Slovenian, and Swiss reports each state, in terms that closely track each other, that a generic prompt does not generate authorship in the resulting output.[12] The Greek report adopts an explicit two-prong formulation: identifiable free and creative choices in conception, plus creative control in the final realisation such that the author's personality is reflected in the final form.[13] The Slovenian report enumerates indicative criteria that closely track the three-tier framework I propose in Part IV: prompts alone are insufficient; iterative prompting plus selective curation may contribute to originality; substantive human modification is more likely to satisfy the threshold; hybrid creation with effective human control may suffice.[14] The Polish report traces the same fallback logic through the compilation and selection-and-arrangement route under article 3 of the Polish Copyright Act.[15] These are different doctrinal pathways converging on the same intuition: authorship is established by what the human contributes to the *expression* of the work as a whole, not by the quantity of her engagement with the machine.

Third, the convergence extends to the United Kingdom, even with the one provision that appeared to depart from it. Section 9(3) CDPA, designating as the author of a "computer-generated work" the person by whom the arrangements necessary for its creation were undertaken, has long been read as a copyright-by-legislative-fiction mechanism that the AOIC framework does not replicate. The UK Government's *Report on Copyright and Artificial Intelligence*, presented to Parliament on 18 March 2026 pursuant to section 136 of the Data (Use and Access) Act 2025, has now announced an intention to repeal section 9(3), citing minimal evidence of practical reliance on the provision and concluding that "it is not clear that this market failure exists in the case of wholly AI-generated creative output, where the marginal cost of production is very low."[16] The empirical conclusion deserves to be quoted. The British

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Guadamuz, 'Do Androids Dream of Electric Copyright? Comparative Analysis of Originality in Artificial Intelligence Generated Works' (2017) 2 IPQ 169. For the position closer to that defended here, namely that existing originality doctrine can do most of the work, see P Bernt Hugenholtz and João Pedro Quintais, 'Copyright and Artificial Creation: Does EU Copyright Law Protect AI-Assisted Output?' (2021) 52 IIC 1190.

[12] Croatia National Report Q11; Czechia National Report Q11; Finland National Report Q11; Germany National Report Q11; Mexico National Report Q11; Poland National Report Q11; Slovenia National Report Q11; Switzerland National Report Q11.

[13] Greece National Report Q11.

[14] Slovenia National Report Q11.

[15] Poland National Report Q11.

[16] Department for Science, Innovation and Technology and Department for Culture, Media and Sport, *Report on Copyright and Artificial Intelligence* (March 2026) (presented to Parliament pursuant to s 136 of the Data (Use and Access) Act 2025), 104–11 (UK March 2026 Report); United Kingdom National Report Q11. The quoted passage is at 106.

legislature, having looked closest at whether to incentivise wholly machine-generated output, found the case for doing so unproven. In my view, had article 9(3)'s intent been to do away with the fundamental principle of originality and thus been meant to protect *under copyright law* productions devoid of (human-caused) originality, the legislator would have signaled this. In fact, this was essentially technologically infeasible at scale when the provision was adopted, and, hence, to read that intent in the provision is both anachronistic and uncalled for.

Read alongside the Italian reform, the result is striking: the only two European legislatures to have spoken directly to AI authorship have done so to *reaffirm* the human-authorship requirement, the United Kingdom by announcing the possible repeal of section 9(3) and Italy by codifying what one might call a qualitative test.[17]

II. The Munich Substance and the Frankfurt Procedure

If the eighteen reports converge on the substance of the originality requirement, two recent German decisions work out the operational mechanics of its application. They should probably be read together.

The first is the judgment of 13 February 2026 in proceeding 142 C 9786/25 of the *Amtsgericht* München, addressing copyright in AI-generated logos.[18] The court's central holding is that copyright protection arises only where the creative elements within the prompt "dominate the output so much that the object can be considered the author's own original creation." A 1,700-character prompt was held insufficient. The court's reasoning was that the prompt consisted of "generally formulated, open-ended instructions" that left the actual "design decisions" to the AI; iterative refinement commands such as "make it more artistic" were routine technical adjustments rather than creative determinations; and "mere selection of one product from four proposals" was insufficient to generate authorship in the output. The court made a clear distinction: a 1,700-character prompt of that nature "is ultimately to be assessed no differently than a written commission to a human developer to create the logo." A direction establishing a client relationship is not the same thing as authorship of the resulting work,

[17] It is worth noting in passing that the Italian rapporteur frankly acknowledges Big Tech lobbying as a factor in the legislative process leading to the 2025 reform: Italy National Report Q9.

[18] *Amtsgericht* München, judgment of 13 February 2026, 142 C 9786/25, GRUR-RS 2026, 1513; Germany National Report Q11. The decision is the first by a Member State court directly applying the AOIC standard to AI-generated images. The OLG Köln has reached a complementary result for computer-aided artistic works, holding the Richter window protected because the artist controlled the framework, selected specific colour parameters, and intervened manually: Germany National Report Q11.

regardless of the prompt's length or the care invested in its drafting. The decision also affirms, in terms worth recording, that "copyright rewards and protects neither investments, time spent, nor diligence, but exclusively the result of creative activity."[19]

The procedural counterpart was supplied ten weeks earlier by the *Landgericht* Frankfurt am Main in its judgment of 17 December 2025, proceeding 2-06 O 401/25.[20] The court there worked out, with care, how the burden of proof should be allocated when authorship of an AI-assisted work is contested. The party accused of infringement must first present concrete evidence that the claimant's work is an AI creation and not eligible for protection. Only then must the claimant explain in detail how the work was created and which elements that recognisably reflect personality are based on human activity. To my knowledge, this is at present the most carefully reasoned response to the procedural problem in any European jurisdiction. The German rapporteurs note that the rule operates against the background of the general civil-procedure rule that the party invoking copyright bears the burden of proving authorship.[21] The Swedish rapporteur supplies a useful comparator: under the Swedish Supreme Court's reasoning in *Smultron*, the burden may swing between opposing parties on what can easily and objectively be observed (*res ipsa loquitur*).[22] What Frankfurt adds is a structured shifting mechanism that gives both sides a workable role in the litigation: the defendant must come forward with concrete evidence rather than mere assertion; the claimant must then identify the human contribution rather than rest on a general claim of authorship. Frankfurt, in effect, operationalises the documentation requirement at the procedural level.

A parallel development in Hungary deserves mention here, because it shows the same intuition moving through institutional channels rather than judicial ones. Section 13.7 of the Artisjus distribution rules, adopted in May 2025, requires an author of a musical work, on Artisjus's request, to certify that any use of generative AI did not displace the author's own creative intellectual activity, on pain of withholding and reclamation of royalties.[23] The Hungarian rapporteurs describe this explicitly as a shift in the burden of proof at the level of

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[19] Munich Court (n 17) para 22, in the original: *Das Urheberrecht belohnt und schützt nicht Investitionen, Zeitaufwand oder Fleiß, sondern allein das Ergebnis einer kreativen Tätigkeit*. The author's translation.

[20] *Landgericht* Frankfurt am Main, judgment of 17 December 2025, 2-06 O 401/25; Germany National Report Q11.

[21] Germany National Report Q11.

[22] Sweden National Report Q11, citing *Smultron*, NJA 1994 p 74. The Swedish position is that the burden of proof in copyright disputes may shift between parties on observable similarity, an analogous procedural intuition to the Frankfurt rule.

[23] Artisjus, *Felosztási Szabályzat* (May 2025), s 13.7; Hungary National Report Q11. Artisjus has also developed a separate work registration form for AI-assisted works, available at https://www.artisjus.hu.

CMO regulation. The convergence is striking. Frankfurt and Artisjus are reaching, through different institutional routes, the same allocation of evidential burden: the human claimant must be in a position to identify and document her own creative contribution, distinct from the machine's substrate. Both presuppose the qualitative AOIC test as the substantive standard, and both implement it through procedural devices that screen out unfounded claims without barring meritorious ones.

Taken together, these sources describe a workable framework for AI-output authorship that requires neither legislative innovation nor doctrinal reconstruction: a substantive test that asks whether the human's expressive choices dominate the output (Munich); a procedural counterpart that asks the defendant to come forward and the claimant to identify (Frankfurt); and an institutional implementation through CMO certification (Artisjus).

III. The Painer Tension

Before moving to the proposal, however, there's a complication. The Court of Justice held in *Painer* that even a tightly constrained creative context generates authorship where the author exercises whatever latitude she has in a way that reflects her personality.[24] The court was speaking, formally, of the originality threshold for a single author working in a constrained genre, the portrait photograph. It was not addressing co-authorship. But the *Painer* reasoning produces a surface argument that is harder than it first appears for the LLM editing case. If creative latitude doesn't need to be abundant, can we say a human editor who makes many free choices within an LLM's architecture has exercised her latitude to express her personality? On a literal reading, the AOIC standard would be satisfied by the presence of any identifiable free choices, and a human editor who has made many such choices in revising an LLM draft would satisfy it comfortably.

The argument must be taken seriously. Several rapporteurs note its surface plausibility, the Italian, Slovenian, and Hungarian reports most explicitly.[25] Yet I would suggest that there is good reason to resist a literal reading of *Painer* in this context and *Mio and Others*, the Court of Justice's most detailed elaboration of the AOIC standard since *Cofemel* and *Brompton Bicycle*, supplies it.[26] Specifically, three points from *Mio* bear on the present analysis.

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[24] *Painer* (n 3) paras 88–92.

[25] Italy National Report Q11; Slovenia National Report Q11; Hungary National Report Q11.

[26] *Mio and Others* (n 3) paras 65, 70–75. The Court's holdings on the AOIC standard are stated in general terms and are not confined to applied art.

First, the Court held that the choices and the personality must be *visible* in the subject matter for which protection is claimed. Process evidence of creative engagement is admissible but not sufficient. Second, the Court introduced what is best described as a non-presumption principle: even where the author's choices were not technically constrained, those choices do not thereby automatically qualify as creative for AOIC purposes. The court must actively seek out and identify the specific creative choices expressed in the work; it cannot presume their creative character from the mere fact of their existence. Third, the *dispositif* of the judgment held that choices "which, while free, do not bear the imprint of the author's personality by giving that subject matter a unique appearance" are insufficient.

Applied to LLM editing, the *Mio* framework distinguishes what *Painer* contemplates from what a literal reading of *Painer* would over-generously sweep into authorship. True, the *Painer* photographer's free choices were choices about the work she was creating from the outset, and they shaped the expressive character of the resulting image from the moment of its creation. The LLM editor's choices are different in kind: they operate on a text whose expressive architecture, structure, rhythm, and characteristic formulations were generated by a system whose outputs she is revising. *Mio*'s visibility requirement and non-presumption principle confirm that authorial contribution must be readable in the work, not merely demonstrated by process, and that creative character cannot be presumed from the mere quantity of free choices made downstream of the machine's architecture.

How *Mio* relates to *Painer* is, as I see it, the most consequential question the EU/EEA national reports bring to the surface. The Dutch and Norwegian rapporteurs read *Mio* as the operative benchmark for borderline AOIC cases, and they are right to do so.[27] But the reading sometimes invites a slightly misleading conclusion that *Mio* has displaced *Painer*, or has narrowed it. It has done neither. The two judgments rest on the same intuition, and each does different work in applying it. *Painer* holds that the constraint of genre or context, by itself, will not strip a free choice made within the constraint of its capacity to anchor authorship; *Mio* holds that the absence of constraint, by itself, will not transmute a choice into a creative one. Both can apply to the LLM-edited text. What an AOIC analysis must show is therefore not how many free choices the editor made, nor how tightly the LLM's architecture confined those choices, but whether the choices, in whatever quantity and within whatever architecture, are readable in the work and bear there the imprint of the editor's particular personality. The trace

[27] Netherlands National Report Q11; Norway National Report Q11.

of a creative mind in the resulting text, not the record of careful labour at the prompt window, is what an AOIC analysis is looking for.

IV. The Collaborative Writing Standard

These reports collectively support what I propose as the operative standard for LLM-edited textual works, which is the analog of what copyright law has long required for collaborative human authorship. The structural question is the same in the LLM context: has the human claimant demonstrated a creative relationship to the work as a whole that justifies the name of author? That question is answered, in the analog context, by reference to a high threshold of significance: not merely contribution to a work but creative origination of it. The same threshold should govern the LLM context, not because the LLM is a co-author whose contribution must be matched or exceeded (it has no authorial interest to protect), but because the structural question is identical.

The standard can be satisfied, in exceptional cases, through highly iterative and constrained prompting that constitutes a form of expressive composition. The Munich decision discussed above sets out the conditions under which such prompting can suffice, and they are stringent: the prompts must specify the expressive elements of the output, must predictably produce those specific elements, and must cross the line from unprotectable instruction into protectable expressive specification. In the general case, however, the standard requires editing that displaces the LLM's expressive choices rather than refining them. Light copyediting does not suffice, because it serves the output rather than displaces it. Substantial editing falls into the case-by-case territory the Copyright Office has identified, and the question is whether the human's revisions reorganise the expressive architecture or merely improve its surface. Transformative rewriting, in which the human takes the LLM output as raw material and reconceives the work's structure, voice, and argument, satisfies the standard because the resulting work is, in the meaningful sense, the product of the human's authorial mind.

It is worth emphasizing what displacement does and does not do, for the point is easily confused. The principle at work is the standard new-matter rule: the second author owns the expression she contributes and never the underlying material as such, whatever the nature of that material.[28] For the purposes of this discussion, an LLM draft is unprotected preexisting

[28] The principle is the standard rule of new matter. In US law it is codified, for compilations and derivative works, in 17 USC § 103(b), under which copyright extends only to the material the second author contributed and not to the preexisting material, whatever its nature. A work of sufficient human authorship built on an AI-generated substrate is not, strictly, a derivative work, because it is not based on a preexisting "work": see 17

material, no more and no less so than a sonata whose term has expired, the dramatic skeleton an adapter takes from a long-dead playwright, or a piece of driftwood worked into a sculpture. The question then is how much of the published work is the human's own expression. If she merely polishes the expression of the draft, she owns only her polish. The passages she leaves standing or to which she makes no copyrightable contribution that are separable remain unprotected matter that anyone can reproduce. She may have a thin copyright in her selection and arrangement of the parts. If her voice and her particular creative choices have so absorbed and reworked the draft in her restructuring that no separable, protectable piece of the source expression survives in the published work, her expression saturates the work. She owns the whole, though never the idea itself, which others remain free to use. It is not a necessity that *all* the trace of the source disappear to possess the whole; the requirement is that there be no free-standing fragment of the source's expression lifted. Isolated or vestigial echoes do not defeat it for the same reason: they are not separately appropriable, and whatever a copyist could extract from them was never a human's to lose.[29]

Three diagnostic criteria can be actively applied in this context to measure whether the human contribution is sufficient to generate copyright protection in the work entire. *Structural displacement* asks whether the human has reorganised the work in ways that depart from the LLM's architecture or has accepted that architecture and worked within it. A human who rewrites the LLM's prose while leaving its paragraph-by-paragraph structure intact has improved the LLM's expression without displacing its organisational intelligence. *Voice* asks whether the final work has a distinctive voice attributable to the human's choices, or whether it reflects the characteristic patterns of LLM output that the human's revisions have polished but not replaced. Voice is perhaps the most diagnostic indicator of authorial presence, and it is also the dimension on which LLM outputs most consistently fall short of what a human author produces from her own expressive resources. *Expressive specificity* asks whether the final work contains formulations, images, arguments, or structural choices distinctively the human's,

USC § 101. It is an original work incorporating unprotected material, to which the same new-matter principle applies a fortiori. The size of the contribution is fixed by the idea/expression dichotomy and must be more than trivial. See L Batlin & Son Inc v Snyder 536 F.2d 486, 491 (2d Cir 1976) (en banc); Hoehling v Universal City Studios Inc 618 F.2d 972 (2d Cir 1980) (the author of a historical narrative owns the expression but not the underlying facts or theories, which remain free for later authors).

[29] The reuse of small fragments is, of course, subject to the quotation (or citation) right. See Tanya Aplin and Lionel Bently, *Global Mandatory Fair Use: The Nature and Scope of the Right to Quote Copyright Works* (Cambridge University Press 2020).

bearing the marks of a particular creative intelligence at work, or whether it consists primarily of well-executed but generic expression.

Those three diagnostic criteria can be used to measure the human contribution rather than from the machine contribution. They should be measured by kind rather than by count – not by how authorless the substrate is, but by whether what the human added, removed, or modified saturates the work or simply adds to it in separable form. Structural displacement and voice are properties of the whole text and tend to carry it; expressive specificity can be local, and a contribution of only discrete felicities is the separable case, yielding ownership of those contributions and no more. Thin and thick, then, are simply the two poles of this spectrum: the choice and arrangement of surviving unprotected material at one end, saturating and fully human expression at the other; and the spectrum is the same whether the source is a database of facts, a public domain play, or the output of a machine. The absence of an author of the machine changes only one thing: there is no owner of the surviving material, and the human who exploits the result need not ask anyone's permission. It does not enhance her ownership.[30]

The three indicators converge on a single underlying principle supported, as I see it, by the national reports: the human's authorship of an LLM-assisted work is demonstrated not just by the quantity of her changes but by the degree to which the final work expresses her creative intelligence rather than the machine's statistical competence. That principle is, at bottom, the same principle that copyright law has always applied to the question of authorship. The LLM context does not require a new doctrine. It requires the faithful application of an existing one to a new set of facts.

Conclusion

The collaborative writing standard has a corollary that the eighteen reports collectively confirm. A substantial proportion of LLM-assisted textual production, the work of skilled professionals who use LLM outputs as drafts and revise them carefully but not displacing the preexisting material's expression, will not, under this standard, attract a copyright of normal thickness in the work as a whole, the human retaining only the thin copyright in her own contributions and in her creative selection and arrangement, if any.

[30] And, as a matter of US copyright law, the work with enough human creativity based on an AI generated substrate cannot be a derivative work because it is not based on one or more preexisting "works" (17 U.S.C. 101).

The empirical record on the substitution of human creativity by AI suggests a substantial 'unprotected middle', supported by data from several national reports. The German rapporteurs cite the GEMA-SACEM study projecting EUR 2.7 billion in cumulative music-creator revenue at risk over 2023–2028 and a reported eighty percent decline in income from background-music use.[31] The Finnish report compiles three quantitative surveys, showing eighty-one percent of creators expecting customer willingness to pay to fall and seventy-two percent expecting income to decrease.[32] The Hungarian, Dutch, Greek, Portuguese, Slovenian, UK, and US reports each provide convergent evidence at the sectoral level.[33] The translation, illustration, marketing copy, routine journalism, and AI music sectors palpably feel the impact. The question of whether law should respond by creating new rights is one I leave for later. The question for present purposes is what existing copyright doctrine can do, faithfully applied, and what it cannot.

What it can do is identify the floor below which copyright of normal thickness does not extend under existing law on either side of the Atlantic and across the eighteen jurisdictions whose reports this contribution has drawn upon. What it cannot do, without legislative authority, is create a new category of protection for the skilled but sub-authorial LLM editor or prompter whose work falls into the unprotected middle.

One could argue that the standard proposed by this contribution under-protects the skilled professional whose careful but non-transformative editing enhances an LLM output without displacing it. The objection is real, but it is an objection to the consequences of the standard, not to its accuracy. Copyright has never extended its protections to skilled labour as such, and the question whether the LLM editor whose work falls in the unprotected middle should now be brought within them is a question for legislatures, not for courts applying the existing originality test. To answer it in the courts by stretching AOIC or section 102 to absorb

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[31] Germany National Report Q10. The figures derive from a GEMA-SACEM study projecting cumulative impact over 2023–2028 in Germany and France.

[32] Finland National Report Q10, citing Statistics Finland (2025), the ETLA/EVA autumn 2024 survey (n=2,018), and the Kopiosto 2025 survey (n=1,114).

[33] Hungary National Report Q10 (Deezer data on 60,000 AI-generated tracks uploaded daily, up to 3% of total streams from AI tracks, up to 85% of those streams fraudulent in 2025); Netherlands National Report Q10 (Boekman/Creatieve Coalitie 2026 study, n>700, with one in five self-employed cultural workers reporting income drops); Greece National Report Q10 (Deloitte/SEPE study estimating 250,000 Greek jobs highly exposed to GenAI); Portugal National Report Q10 (CIP National Survey on AI Adoption 2025, Community Innovation Survey 2024, Competition Authority papers); Slovenia National Report Q10; United Kingdom National Report Q10 (citing House of Lords Communications and Digital Committee, *AI, Copyright and the Creative Industries*, HL Paper 267 (2024–26)); USA National Report Q10 (citing Chakrabarty, Ginsburg and Dhillon, 'Readers Prefer Outputs of AI Trained on Copyrighted Books Over Expert Human Writers' (2026)).

the unprotected middle would do more damage to the doctrinal architecture than the unprotected middle does to the editor.

In sum, the reports collectively show a system that converges on the substance of the question and diverges only on the speed and instruments of response. Implementation, not doctrine, is where the strain shows. The collaborative writing standard, in my opinion, is the floor of copyright (of normal "thickness"). The unprotected middle below it is a legislative problem, not a judicial one, and the eighteen reports provide legislatures considerably more material to work with than they had a year ago.

* Milton R Underwood Chair in Law, Vanderbilt University; Senior Associate Professor (part-time), Vrije Universiteit Amsterdam. A longer version of the argument in this contribution will be published as *The Ghost in the Draft: Copyright Authorship and the Human Editor of LLM Outputs, A Comparative Analysis*. The Author thanks the national rapporteurs whose reports made the present synthesis possible. All errors remain the Author's own. The Author wishes to note the use of AI in preparing this contribution to format footnotes and provide general editorial improvements.