



"Deus EST Machina"

If you could, would you pay \$180,000 for a painting? A price point too modest for a Monet or Mondrian, but attractive for anyone with deep pockets and an eye for the next big thing. But what if the genius behind the canvas was not St Martin's next wunderkind but rather a humanoid robot boasting a black wig and bionic limbs?

That's the question posed at Sotheby's this week.

"AI God" is a 7-foot-tall portrait created by Ai-da, a remarkable looking machine developed by Aidan Meller and Engineered Arts. "She" has created a series of images inspired by Alan Turing, impressive enough for her to shatter the eponymous test which bears his name. In a recent speech to Parliament, the robot insisted: *"Although I am not alive, I can still create art."* And it is her art, created using advanced AI algorithms, which is set to turn the art world, and market, inside out.

But can a machine really create "art"? According to the European *acquis*, no. At least not for the purposes of copyright subsistence. A work must sufficiently express the author's "own intellectual creation", reflecting her personality as a result of "free and creative choices" (*Cofemel* C-683/17, §29-30). This requires human authorship. The same test continues to apply in the UK, but only until such time as our courts may choose to diverge. Baked into domestic legislation is an "oven ready" mechanism whereby a computer-generated work (with no human author) can attract copyright protection (CDPA 1988 ss.9(3), 178). So, as Andres Guadamuz has argued, our legal framework may be better placed than most to embrace the coming of the AI-art age.

You may think "art" can only ever be defined by reference to our uniquely human condition, that anything separated from this experience necessarily has no artistic merit. However, artistic merit is an irrelevant consideration for the purposes of copyright (*Sawkins* [2005] EWCA Civ 565, §31) and, in any event, this perspective may well change if the dollars destined for a shredded Banksy start redirecting towards the latest cyborg still-life. The creation of great art has always depended on the patronage of the wealthy. And today there are few wealthier than the tech pioneers whose efforts

have helped spawn this new generation of artists. It seems entirely plausible not only that our laws will recognise the artistic nature of these works, but that we ourselves will start to champion their value, and in so doing redefine what is meant by “art”. A sobering thought, perhaps... *“Ecce, machina!”*