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RESEARCH ARTICLE

# Legal Protection Mechanisms for Copyright of Artificial Intelligence-Generated Content

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## ABSTRACT

With advances in quality productive forces, new types of intellectual achievements, such as Artificial Intelligence-Generated Content (AIGC), have emerged on a large scale. While this expansion broadens the boundaries of knowledge production, it also presents profound challenges to traditional judicial copyright rules. Increasing machine autonomy has gradually diminished the extent of human contribution in the process of creation, and machine-generated outputs challenge author-centrism, which places natural-person attribution at its core, thereby rendering the legal protection for AIGC copyright an increasingly pressing issue.

In current judicial practice, the standards for assessing the originality of AIGC works diverge significantly. Some cases recognize personalized human choices, such as data input and parameter settings, as sufficient to establish copyright eligibility. Others, however, deny protection on the grounds of insufficient human participation. Consequently, disputes over rights ownership have become prominent, calling for theoretical and normative clarification. Under a subjectivist approach to originality, "human intellectual contribution" is the essential prerequisite for AIGC copyright eligibility. As a product of human-machine collaboration, AIGC inherently relies on human decisions in model design, prompt input, and output curation. Therefore, it has not deviated from the personalism foundations of copyright law, and artificial intelligence, in essence, continues to function as a tool employed by human creators.

Accordingly, the development of an AIGC copyright protection framework should remain anchored in a "human-centric" approach. Respecting the principle of autonomy of will, the framework should emphasize the user's central role in the generation process, and resolve conflicts in judicial adjudication by clarifying originality standards and delineating ownership rules. This institutional design not only meets the demand of new quality productive forces for encouraging innovation, but also strikes an appropriate balance between technological development and rights protection. It provides stable and predictable judicial guarantees for the healthy development of the AIGC industry and promotes value reconstruction and functional upgrading of copyright law in the digital civilization era.

### KEYWORDS

Artificial Intelligence Generated Content (AIGC), legal protection of copyright, originality, ownership of rights, balance of interests, copyrightability

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원저

# 인공지능이 생성한 콘텐츠의 저작권에 대한 사법보호 메커니즘 연구

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## 차례

## 국문초록

새로운 질적 생산력이 지속적으로 발전함에 따라 '인공지능 생성 콘텐츠(AIGC)'를 대표로 하는 새로운 지적 성과가 대규모로 나타나고 있다. 이는 지식 창조의 경계를 확장할 뿐만 아니라, 전통적인 저작권의 사법적 규정에도 깊은 도전을 제기하고 있다. 기계의 자율성 강화는 창작에서 인간의 기여도를 지속적으로 희석시키고 있으며, 스마트 출력은 자연인 창작을 핵심으로 하는 작가 중심주의에 강한 충격을 주어 AIGC의 저작권법 사법 보호 문제가 더욱 시급해지고 있다. 현재 사법실무에서 AIGC의 독창성에 대한 판단기준에 뚜렷한 의견 차이가 있으며, 일부 사건은 데이터 입력, 매개변수 설정 등의 단계에서 인간의 개성 있는 선택이 저작권성의 기초를 구성한다고 인정하고 있다. 반면, 일부 사건은 인간의 참여도가 부족하다는 이유로 저작권성을 부정하고 있으며, 권리 귀속 논란도 이에 따라 두드러지고 있어 이론과 규범적 차원에서 대응이 시급하다. 독창적인 주관주의 기준에서 '인류의 지혜 기여'는 AIGC의 저작권성의 핵심 전제조건이다. AIGC는 인간-기계 협력의 지적 성과로서, 그 생성과정은 항상 인간의 모델 설계, 지침 입력 및 성과 선별에 의존하며, 저작권법의 인격주의 기반에서 벗어나지 않는다. 인공지능은 본질적으로 여전히 자연인이 창작하는 도구에 속한다. 이를 바탕으로 AIGC 저작권 보호 체계를 구축하기 위해서는 '인간 중심주의'를 고수해야 하며, 의사자치원칙을 존중하는 전제 하에 사용자가 생성과정에서 갖는 핵심 위치를 부각시켜야 한다. 즉, 독창적인 판단기준을 명확히 하고, 권리귀속원칙을 명확히 하여 사법 판결의 충돌을 해결해야 한다. 이 제도 설계는 새로운 질적 생산력의 혁신 인센티브 요구에 부합할 뿐만 아니라, 기술발전과 권리보호 간의 관계를 조율하여 AIGC 산업의 건강한 발전을 위한 안정적이고 예측 가능한 사법적 보장을 제공하고, 저작권법의 디지털 문명 시대 가치 재구성 및 기능 업그레이드를 촉진한다.



**주제어**

인공지능생성콘텐츠(AIGC), 저작권의 사법보호, 독창성, 권리귀속, 이익균형, 저작권성

## 1. Introduction

In September 2023, during an inspection tour in Heilongjiang Province, China, General Secretary Xi Jinping creatively proposed the concept of "New Quality Productive Forces." As a form of productive force led by technological innovation and aligned with the requirements of high-quality development, new quality productive forces are profoundly reshaping the models of knowledge creation and value distribution. How to harmoniously integrate new quality productive forces, represented by Artificial Intelligence Generated Content (hereinafter referred to as "AIGC"), into the system of copyright interest protection and allocation has become a realistic question that current copyright law must explore and answer. The large-scale emergence of AIGC has not only expanded the boundaries of human cognition but also challenged the underlying logic of the traditional copyright regime. Among these challenges, the copyrightability of AIGC and the derivative issue of rights ownership constitute fundamental propositions within the series of AIGC copyright conundrums; yet, a unified understanding has not been formed in either theory or practice. Furthermore, the continuous development of new quality productive forces has empowered machines with greater autonomy, further diminishing human contribution in AIGC and intensifying the impact of intelligent output on author-centrism. This has pushed the issue of legal protection for AIGC copyright into a more urgent phase. Faced with controversies over the standards for judging the originality of AIGC and the resulting judicial conflicts regarding rights ownership, there is an imminent need to provide theoretical clarification and explicitly respond to these judicial contradictions at the normative level.

Fundamentally, the debates in judicial practice and academic circles across various countries regarding the copyrightability of AIGC stem from the deep-seated contradiction between the "human-centric" view of creation and "algorithmic subjectivity" under new technological conditions. Therefore, the resolution of these issues requires a return to the standard of "human-centrism." Based on the pivotal status of "human intellectual contribution" within the element of "copyrightability," it is necessary to clarify the instrumental attribute of artificial intelligence in the creation of works and further elucidate that AIGC, as an intellectual achievement of human-machine collaboration, has not lost the personality-based foundation of copyright law. This will ultimately justify the copyrightability of AIGC within the field of copyright law. On this basis, to construct a copyright adaptation path that aligns with technological ethics and industrial demands, and to reshape the AIGC copyright value distribution system, it is essential—under the philosophy of respecting the principle of party autonomy—to emphasize the core status of the user in AIGC generation; the AIGC copyright distribution system should be accordingly designed, and the judicial rules for the allocation of AIGC copyright ownership should be improved as well.

## 2. The Specificity and Urgency of Legal Protection for AIGC Copyright

In cases such as *Tencent v. Yingke* (2019)[1] and *Li v. Liu* (2023) (a dispute over infringement of the right of attribution and the right of information network dissemination)[2], the courts held that in the process of using artificial intelligence, the plaintiff's actions—including data input, setting conditions, and modifying specific prompts and parameters—sufficiently reflected personalized human selection and arrangement, thus possessing copyrightability. Conversely, in cases like *Film Law Firm v. Baidu*[3] and *Feng v. Suzhou Dongshan Precision Manufacturing Co., Ltd.*[4], the courts held that the content in question relied primarily on AI generation, and because the human creative act involved only inputting prompts and setting parameters without providing original records of creation such as flowcharts, it was impossible to determine that the human had manifested personalized selection in the generated content; consequently, the AIGC in question was deemed to lack copyrightability. Evidently, there are conflicting judgments regarding whether to protect AIGC. Clarifying academic controversies and clarifying legal norms have become urgent necessities to respond to these judicial contradictions; accurately addressing the copyright issues of AIGC is now a critical task demanding immediate resolution.

### 2.1. The specificity of legal protection for AIGC copyright

#### 2.1.1. Machine autonomy diminishing human contribution

With its powerful learning capabilities and autonomous generative abilities, artificial intelligence diminishes human contribution in the creation of works within its expression, making the determination of whether AIGC constitutes "creation" in the sense of copyright law a fundamental difficulty in identifying intellectual achievements. Unlike the human creation process, contemporary AIGC generation is based on machine learning technology, premised on massive data training; it captures data materials to the greatest extent possible, analyzes and organizes them, and establishes corresponding models to solve specific problems. In summary, the AIGC creation procedure consists of four steps: "collecting data - analyzing data - summarizing models - solving problems." In the process of generating certain AI works, human user contribution is manifested more as "trigger-style instructions," while the artificial intelligence acts as the "actual creator" of the content. Consequently, some scholars argue that the generative results of AI are content automatically generated by AI programs based on data and algorithms through autonomous learning and modeling, wherein human participation is extremely low,

1) See the Civil Judgment [(2019) Yue 0305 Min Chu No. 14010] by Nanshan District People's Court of Shenzhen Municipality, Guangdong Province.
2) See the Civil Judgment [(2023) Jing 0491 Min Chu No. 11279] by Beijing Internet Court.
3) See the Civil Judgment [(2018) Jing 0491 Min Chu No. 239] by Beijing Internet Court.
4) See the Civil Judgment [(2024) Su 0582 Min Chu No. 9015] by Zhangjiagang City People's Court of Jiangsu Province.

making it difficult to view such content as personalized expression created by humans using AI as a tool.[5)]

Whether artificial intelligence plays an "instrumental" role or an "independent" role in the content generation process has triggered widespread controversy, indirectly influencing the judicial orientation towards related issues in practice. Scholars supporting the "instrumental nature" of AI uphold a "humanist" stance, arguing that the core value of AI-generated products still stems from the author's contribution. This view holds that AI is merely a tool for humans, and AI-generated products are effectively human-generated products, wherein human choices regarding model selection, prompt input, and parameter setting may constitute original selection.[6)] Scholars supporting the "independence" of AI emphasize that the proportion of human contribution in the AIGC generation process is diminished, and thus it is inappropriate to recognize it as a work in the traditional sense. Scholars holding this view acknowledge the learning ability possessed by AI but do not agree that the process of applying the results of this "learning" to generate content constitutes creation; rather, AIGC is merely the result of the application of certain algorithms, rules, and templates, which is far from the intellectual creation required to become a "work."[7)] Similar views also hold that at the current stage, AIGC does not reflect human personalized selection and arrangement; rather, AIGC belongs to the results of machine operation and is not directly produced by the intellectual creation of a natural person.[8)] Regarding the aforementioned "yes" or "no" dilemma, some scholars summarize that if all AIGC presenting object differentiation is included within the scope of copyright protection without regard to the connection between object differentiation and subject creativity, there is a potential risk of incentive alienation or dislocation; conversely, excluding all AIGC would improperly restrict the scope of objects, leading to a situation where information achievements that should be regulated by copyright law fail to obtain protection.[9)]

### 2.1.2. The impact of intelligent output on author-centrism

"Author-centrism" is a theoretical abstraction of copyright history. In the traditional creation paradigm, the author maintains a core position, and their

5) Tao Qian, "On the Protection of AI-Generated Results by Copyright Law: Justification of Data Processor's Right as a Neighboring Right", *Law Science*, No.4(2018), p. 3.

6) Li Yang & Li Xiaoyu, "Discussion on Copyright Law Issues of AI-Generated Objects from the Perspective of Kantian Philosophy", *Law Science Magazine*, No.9(2018), pp. 43-54; Jiang Ge, "On the Copyrightability of AIGC: From the Perspective of Users' Original Expression", *Intellectual Property*, No.1(2024), pp. 36-67.

7) Wang Qian, "On the Nature of AI-Generated Content in Copyright Law", *Legal Science (Journal of Northwest University of Political Science and Law)*, No.5(2017), pp. 148-155.

8) Zhu Jianjun, "Research on Generative AI Copyright Infringement Issues", *Intellectual Property*, No.2(2025), pp. 44-60.

9) Diao Jiaxing and Feng Xiaoqing, "Copyright Law Issues of AIGC: Analytical Framework and Solution Scheme", *Journal of Hebei University (Philosophy and Social Science)*, No.2(2024), pp. 137-149.

personal intent and expression constitute the "Constitution" for interpreting the work.[10] A work is the embodiment of the author's personality, giving rise to moral rights exclusive to the "author." Precisely for this reason, the purpose of copyright law lies in safeguarding the realization of the copyright holder's rights, upholding the institutional goal of incentivizing creation; its systemic construction and ownership determination revolve entirely around human creative behavior.

Copyright law, based on natural rights jurisprudence, has always been constructed around author-centrism, which conflicts with the underlying logic of contemporary revolutionized creative methods. The training data-driven AI has broken through its former role as a singular auxiliary tool; specifically, artificial intelligence is demonstrating increasingly strong autonomy, and humans are no longer the sole subjects capable of engaging in creative activities. In terms of AI creation examples—from Microsoft's Xiaoice, which can independently compose poetry collections, to the large model Sora, which can generate videos from text, and further to the "The Next Rembrandt" project initiated by Microsoft, ING, and the Rijksmuseum, which can generate paintings in the style of Rembrandt—AI-empowered creators are already widely active in numerous fields such as literature, video, and painting.

From a philosophical dimension, "author-centrism," which advocates that works originate from human creation, was born out of philosophical thoughts such as "Romantic Author Theory," "Personality Theory," and "Subjective Rights Theory." In modern times, inspired by "Structuralism," "Linguistic Philosophy," and "Modern Philosophical Hermeneutics," a new philosophy of the subject has arisen, gradually discarding the creative concept centered on the natural person author. Artificial intelligence aligns precisely with this new philosophy of the subject, becoming important evidence for "Structuralism" to refute "author-centrism." At the level of the relationship between author and work, Structuralism emphasizes the autonomy and self-sufficiency of structure, viewing the textual structure as an independent system. In summary, Structuralism believes that the internal structure within a work plays a critical restrictive role in the birth of the work, thereby severing the direct connection between the work and the author.[11] The principle of "autonomous learning" in contemporary AI coincides with the spirit of Structuralism; its "autonomous learning" is essentially based on "data training," seeking optimal solutions based on textual structure probabilities.

The development and innovation of artificial intelligence technology have, to a certain extent, weakened the connection between the author and their work. The embodiment of the author's personality in the work has diminished accordingly, triggering a re-examination of the dominant position of author-centrism in traditional copyright law. How to squarely face the investment of artificial

10) Lin Xiuqin & Liu Wenxian, "Author-Centrism and Its Legitimacy Crisis: A Philosophical Investigation Based on the Author's Right System", *Journal of Yunnan Normal University (Humanities and Social Sciences Edition)*, No.2(2015), pp. 83-92.

11) Id.

intelligence in its generated content and accurately judge the contribution inputs of humans and artificial intelligence to the generated content has become a necessary prerequisite for stabilizing the copyright system in the new era.

## 2.2. The urgency of legal protection for AIGC copyright

Strengthening legal protection under copyright law for AIGC aligns with the demands of innovation-driven development. Only by strengthening legal protection in the field of artificial intelligence can the innovators of emerging industries be better incentivized; in particular, there is a need to protect the substantial investment and competitive interests of innovators in the AI field. Judicial adjudication plays an innovation-leading role in the development of the AI sector, especially for key technologies and pioneering inventions in the direction of artificial intelligence. By employing robust protection, a broad scope of protection, and high infringement damages, the judicial system enhances original innovation capabilities. In China's first judgment recognizing that AI model structures and parameters are protected by the Anti-Unfair Competition Law—the *Yiruike* case[12]—the court held that the unauthorized use of model parameters trained and optimized by others constitutes unfair competition. This ruling achieved a breakthrough by transforming technological ethics into legal standards, pointing out that "unauthorized use of model parameters trained and optimized by others violates industry business ethics," thereby establishing a protection framework of "substantial investment + competitive interests." This framework emphasizes that innovators should enjoy legitimate rights and interests regarding the substantial investment made during technology R&D and model training. Specific investments include, but are not limited to, data collection, algorithm optimization, computing power support, and labor costs. Simultaneously, the competitive advantages and commercial interests obtained by innovators through these investments should also be protected by law. Additionally, in the case of *Wang v. A Technology Company*[13] in Wuhan, the court held that the plaintiff engaged in conceptual creation and personalized selection during the generation process, which embodied intellectual labor. Even though the image was drawn by AI, the image in question still possessed original expression and could be recognized as a work protected by copyright law. This adjudicative approach promotes the integrated development of AI and the cultural industry, providing strong judicial safeguards for the development of innovative AI industries. This indicates that any unauthorized use or reproduction of others' innovative achievements will not only damage the economic interests of innovators but may also weaken their motivation to innovate, thereby affecting the healthy development of the entire industry.

12) See the Civil Judgment [(2023) Jing 73 Min Zhong No. 3802] by Beijing Intellectual Property Court.

13) See the Civil Judgment [(2024) E 0192 Zhi Min Chu No. 968] by Wuhan East Lake New Technology Development Zone People's Court.

To effectively incentivize original innovation and high-quality output in the field of artificial intelligence, when handling cases in the AI field, courts should comprehensively consider the substantial investment of innovators and the benefits they obtain in market competition. By strictly applying the law and severely cracking down on infringement, a stable and predictable legal environment can be provided for innovators. This not only helps incentivize innovators to continuously invest resources in technological R&D and innovation but also promotes the healthy development of the AI field and drives the widespread application and progress of AI technology.

## 3. Examination of the Status Quo of Legal Protection for AIGC Copyright

### 3.1. Standards for judging the originality of AIGC

Regarding the question of whether AIGC can constitute a work, existing research mostly focuses on whether it satisfies the constituent element of originality. Scholars who emphasize the external form of expression of a work effectively follow the logic of object-based judgment, advocating that the determination of originality only requires consideration of the final manifestation of the AIGC, without considering whether the creation process involves "thought" and "personality."[14] Conversely, scholars who emphasize the substantive content of a work follow the logic of subject-based judgment, advocating that the prerequisite for a work is creation by a natural person author. Given that current copyright law mandates the author must be a natural person, and acknowledging the essential difference between artificial intelligence and humans, they argue that AIGC cannot become a "work" in the sense of current copyright law.

#### 3.1.1. The objective theory based on the external expression of the work

AIGC and traditional human works possess high similarity in external manifestation, and homogeneity exists in terms of economic interest and legal evaluation. These constitute important shared characteristics between the two and serve as a significant basis for judging the originality of AIGC based on the objective external form of expression of the work.

The similarity in thinking modes and data sources between artificial intelligence and humans results in the external manifestation similarity between AIGC and human works. Although the expressive paths of AI and human-generated works differ, the AI thinking mode of "collecting and analyzing data - summarizing models - generating content based on models" bears similarity to that of humans. In this process, artificial intelligence emulates human wisdom and decision-making, utilizing deep learning capabilities to select the optimal function model and generate

14) Zhang Ping, "Institutional Dilemmas and Solutions for the Copyright Legitimacy of AIGC", *Legal Science (Journal of Northwest University of Political Science and Law)*, No.3(2024), pp. 18-31.

content accordingly. Aside from the technological perspective, judging solely from appearance, AIGC is indistinguishable from works by natural persons.[15] Simultaneously, the content upon which AI conducts data training often consists of existing intellectual achievements, the majority of which are copyrighted works; similarly, the knowledge base for human learning and creation is also largely derived from these sources. For example, regarding poetry generated by IBM's "Ou De" (偶得) software, even professional literary researchers find it difficult to distinguish it from Qin Guan's *Evening View of Jinshan*. This serves as a notable example of the high similarity between the external expression of AIGC and traditional human works.

AIGC and traditional human works possess homogeneity in economic interests and align with the institutional purpose of copyright law to incentivize innovation. This is the important foundation for both to obtain equal protection and the key basis for both to receive identical legal evaluation. As Posner stated, "Legal protection of property has the economic function of creating incentives to use resources efficiently." In the same artistic field, the economic value to the consumer remains homogeneous whether the work is AIGC or human-created; this necessitates that both receive identical legal evaluation.[16] In 2022, American designer Jason Allen won first prize in a fine arts competition with *Théâtre D'opéra Spatial (Space Opera Theater)*, created using AI tools. The judges, unaware it was AI-generated, gave it high praise. Evidently, when AI creates artistic results that align with human aesthetic experience and are comparable to human creativity, AIGC acquires use value no different from human works. Consequently, the two maintain homogeneity in legal interests and should receive equal treatment without substantive discrimination in legal evaluation. Furthermore, AIGC has become a significant product in fields such as gaming and music and is widely accepted by the public. Not only is there no difference in consumption demand and artistic experience compared to human works, but AIGC is even favored for its ability to enhance creative efficiency and reduce costs, effectively becoming popular content in the current content market.

#### 3.1.2. The subjective theory based on the substantive content of the work

The disparity in subject status between artificial intelligence and humans is the realistic foundation for the view advocating judgment based on the substantive content of the work. Starting from the instrumental attribute of AI as a bionic system simulating human thought, this theory posits that there is a distinct and insurmountable gap in personality between the AI subject and the human subject. Artificial intelligence, lacking the qualification of an author, cannot satisfy the

15) Liao Si, "On the Composition of Originality and Rights Attribution of AI Creations", *Journal of Northwest Minzu University (Philosophy and Social Sciences)*, No.2(2020), pp. 79-85.

16) Xu Xiaoben, "On the Equal Protection of AI-Generated Content by Copyright Law", *China Legal Science*, No.1(2024), pp. 166-185.

subject requirements for a work; thus, its generated AIGC cannot constitute a work. Furthermore, because AIGC lacks space for personalized expression and fails to meet the requirements of originality, the possibility of it constituting a work is similarly denied.

Creative activities based on human free will differ essentially from the unconscious generative acts of artificial intelligence. After extensive data training, AI can output content based on user instructions. Although its generated content shows no obvious difference in external manifestation from human works, the AI possesses no will or thought during this process. In other words, AI has neither creative intent nor cognitive ability; it merely generates text mechanically based on probability selection within the logical structure formed during data training. Despite possessing powerful learning and autonomous capabilities, AI cannot, in the short term, invest genuine will and emotion into works as humans do.

Artificial intelligence has transcended the scope of traditional creative tools. Unlike electronic devices such as cameras or smartphones—where the photographer's free will directly determines the content of the photo,[17] and the photographer retains ample autonomous choice regarding elements such as angle, composition, ratio, and timing—AIGC presents a marked difference. In the AIGC generation process, the AI's own algorithms and the material training it received determine the generated content.[18] Although AI cannot generate content without user prompt input and parameter selection, this does not imply that the expressive elements of AIGC are determined by the user. In fact, AIGC correlates with computer hardware configuration. The same prompts and parameter settings applied to computers with different configurations result in vastly different images. It is clearly observable that, in such cases, it is not the prompts used by the plaintiff that determine the generated content, but rather the AI itself and the computer's hardware that substantively determine the content. In other words, as long as AI cannot possess the physiological conceptualization activities and intellectual investment identical to humans, and lacks a basis in personality, AIGC cannot become a "work" in the substantive sense.

### 3.1.3. Whether to adopt a higher originality standard

Relying on massive cross-disciplinary knowledge reserves, computational capabilities surpassing humans, and algorithmic screening abilities, artificial intelligence can complete a volume of creation unreachable by humans in a short time. Its automated functions can further compensate for the insufficiency of "physical labor" in traditional human creation. In this context, determining whether the existing threshold for originality is too low, and whether it is necessary to reshape the originality standard for AIGC, has become a theoretical and practical

17) Wang Qian, "Third Discussion on the Positioning of AI-Generated Content in Copyright Law", *Studies in Law and Business*, No.3(2024), pp. 182-200.
18) Id.

problem demanding urgent resolution.

Scholars supporting a higher originality standard for AIGC argue that AIGC can meet originality requirements with ease, and AI can generate massive amounts of works in a short period. If not regulated by a higher originality standard, AIGC might flood the copyright market, squeezing the survival space for original human works, weakening human motivation to create, and eventually replacing natural person works. In the long run, this could shake the institutional foundation of copyright law, which is to incentivize innovation.

Scholars holding the opposing view argue that a unified standard of originality should be maintained for both AI-generated works and human works. The connotation of originality lies in "independent creation" and "creativity";[19] that is, a work satisfies the requirement of originality as long as it is independently created by the author and not completely plagiarized from another work. For AIGC, as long as it is autonomously generated by AI and is not plagiarism of existing works, it meets the requirement of originality. Furthermore, from the perspective of law and economics, the cost of distinguishing between AIGC and works created by natural persons is too high, making it impossible to achieve Pareto optimality in the allocation of social interests. Independently raising the originality standard for AIGC could cause market chaos. If two different standards of originality—high and low—exist in the content market, it will lead to high-standard AI-generated works gravitating toward the category of human works. By then, a large volume of AI-generated works may masquerade as human works to obtain copyright protection. This would not only obscure the source of works but also improperly increase information collection costs prior to market transactions, greatly dampening the vitality of transactions in the existing content market.

## 3.2. The dilemma of AIGC copyright ownership

### 3.2.1. Attribution to the AI designer

Attributing AIGC rights to the AI designer means vesting rights in the person who developed the AI program and constructed the initial algorithms enabling "deep learning." Artificial intelligence exists due to the designer's intellectual investment; without the designer's meticulous construction of AI algorithms, this "creative entity" with ultra-high autonomous capability would not exist. It can be said that the essence of AI-generated works is the operational result of rules and algorithms preset by the designer, and the content reflects the designer's thinking mode to a certain extent. Simultaneously, from the perspective of practical application, in software such as AI writing and AI painting, the user's creation process is overwhelmingly manifested as inputting a few keywords. Granting rights to the user would lead to an imbalance where "light contributors gain heavy rights."

19) Wu Handong, "Questions of Copyright Law Regarding AI-Generated Works", *Peking University Law Journal*, No.3(2020), pp. 653-673.

Furthermore, if market entities seek to use AIGC, they would need to negotiate with dispersed users one by one; attributing AIGC rights to the designer or investor allows for reducing information search costs and transaction costs through "one-stop" licensing.

However, the view of attribution to the AI designer mistakenly conflates artificial intelligence with AIGC. The AI designer acts as the intellectual origin of the AI's birth, but their degree of intervention in AIGC is extremely low, exercising only auxiliary efficacy in the output of the work. Even if the AI designer made substantial contributions during the R&D process of the AI, it is difficult to determine a substantive connection to the generation of the content. Undeniably, the AI designer invested significant creative intellect into the AI product, but during the R&D process, the designer's dedication was primarily in applying technical principles, setting algorithms, and inputting datasets; the designer's efforts ultimately manifest in the improvement of AI performance and function.[20] From a legal perspective, their intellectual achievement is embodied in the AI program itself. In this process, the designer's investment can seek protection and returns through patent rights or computer software copyright. Demanding further benefit returns from AIGC constitutes improper interference with the use of AI and represents an erroneous authorization of "incentivizing one creation multiple times" for the designer. This not only destroys the principle of balancing interests but also obstructs the legitimate and lawful profit of other subjects, contradicting the legislative spirit of existing copyright law.

#### 3.2.2. Attribution to the AI user

Attributing AIGC rights to the AI user is currently the view with the highest support. The AIGC rights are attributed to the user based on their own will to operate the AI system to generate content and fix that generated content; their close connection to the generated content and economic demand are the legitimate reasons for acquiring AIGC copyright.

First, the AI user's degree of contribution to AIGC is relatively high. Even though contemporary AI possesses "deep learning" functions and the degree of human participation in the AIGC production process has declined, it still requires the AI user to input basic generation conditions and operational instructions to generate content. The AI user possesses direct control capability over the AIGC, and the content presentation reflects the themes and thoughts the user wished to express; that is, the user is closely connected to the creation process of the work. The view advocating attribution of AIGC copyright to the user has already been applied in Chinese judicial practice. In the first "text-to-image" AI infringement case heard by the Beijing Internet Court, the court explicitly pointed out in its reasoning that the plaintiff (i.e., the AI user) was the person who directly performed relevant settings on

20) Xu Xiaoben, "On the Equal Protection of AI-Generated Content by Copyright Law", *China Legal Science*, No.1(2024), pp. 166-185.

the AI model involved and ultimately selected the image in question according to their needs. Therefore, the image in question was directly generated based on the plaintiff's intellectual investment and reflected the plaintiff's personalized expression; thus, the plaintiff enjoys the copyright of the image in question.[21)]

Second, provided that generative artificial intelligence has fulfilled the labeling obligations prescribed by existing laws, vesting copyright in the generated content in the user may be regarded as an appropriate legal choice. From the basic principles of the copyright system, the separation of the right of attribution from other copyrights has long been recognized by copyright law: the core of the right of attribution lies in affirming the creator's identity and realizing moral interests and social recognition, whereas other copyrights, particularly property rights, focus on the exploitation, circulation and commercialization of works in the market. The institutional purpose of the labeling obligation for generative artificial intelligence is not merely to exclude such content from copyright eligibility, but to clarify the involvement of artificial intelligence in the creation process on the premise of acknowledging technology-assisted attribution, thereby providing a factual basis for subsequent rights allocation. Therefore, the systematic connection between the labeling obligation and the conferral of the user's moral rights and property rights is not a simple distribution of interests, but a concrete application of the copyright incentive theory in the artificial intelligence era. By granting copyright to users and protecting their moral and economic interests, their enthusiasm for sustained creation and further innovation using artificial intelligence can be effectively stimulated, the lawful dissemination and efficient use of generated content promoted, and the legislative goals of copyright law—encouraging creation and advancing the development of cultural industries—achieved.

Third, the AI user has a stronger economic demand for the generated content. Attributing AIGC rights to the AI user urges them to actively exercise rights and assume obligations. This mode of rights and obligations allocation can promote the scale of market transactions for generated content and drive the economic development of AIGC. It allows the law to incur minimal economic costs when assigning rights, making it the choice most aligned with the lowest economic cost of defining rights.

### 3.2.3. Attribution to the copyright public domain

Attributing AI-generated works to the public domain means allowing the public to use AIGC freely and without compensation, essentially leaving AIGC unprotected. This view advocates that since AI lacks the qualification of an author and a suitable rights holder for AIGC cannot be found, the optimal solution is to treat AIGC as public property placed in the public domain, available for free use by all.[22)]

21) See supra note 2.

22) Xu Xiaoben, "On the Equal Protection of AI-Generated Content by Copyright Law", *China Legal Science*, No.1(2024), pp. 166-185.

However, under the "author-copyright holder" dual subject structure in the field of copyright law, situations where the author and the copyright holder are not the same subject are not uncommon. Therefore, the argument that rights holders cannot be determined simply because AI lacks author qualification is untenable. Directly placing AIGC in the public domain would place subsequent imitators in an overly advantageous position. Because people cannot protect their AIGC through the *Copyright Law*, they will be reluctant to use AI, potentially leading to a decrease in the number of pioneers investing in AI as a tool for creating intellectual property, ultimately leading to the tragedy of the commons.[23)]

Attributing AIGC to the public domain will lead consumers to shift toward seeking and utilizing cost-free AIGC. Simultaneously, when human works are protected by copyright law, using human works inevitably incurs usage and transaction costs. This will drive consumers to favor using AIGC, compressing the market transaction space for traditional human expressive works and derogating the value of traditional human works. In current film and television production, there is a massive amount of special effects produced by AI. For instance, in *The Wandering Earth II*, the team used self-developed AI models to not only increase the efficiency of de-aging single shots of the protagonist by 10 times but also compress special effects costs to one-fifth of similar Hollywood projects. It is evident that AI can not only enhance the aesthetic beauty and texture of film images, effectively creating a sense of realism and three-dimensionality, but has also become a crucial tool for reducing costs in current film and television creation. If AIGC were attributed to the public domain, this would imply that anyone could freely use the special effects created for producing that film. This would not only severely infringe upon the interests of the film's creators but also greatly stimulate a social trend of reaping where one has not sown regarding creative plagiarism.

## 4. Standards for Judicial Determination of Legal Protection for AIGC Copyright

New quality productive forces are led by innovation, breaking away from traditional economic growth modes and productivity development paths; they possess characteristics of high technology, high efficiency, and high quality, conforming to the advanced productivity state of the new development philosophy. In technological innovation, original innovation embodies the foundation of national innovation capability and is the source water of technological innovation. High-standard creation, as the primary link in stimulating the vitality of original innovation, can strengthen support for basic research and frontier technology exploration and assist in laying out forward-looking intellectual property arrangements. Guided by high-quality creation, it continuously enhances China's original innovation capability. In the field of artificial intelligence, Chinese research

23) Jin Chunyang & Xing Hetong, "Research on Copyright Ownership and Infringement Liability Principles of AI Publications", *Publishing Research*, No. 9(2021), pp 73-81.

institutions and enterprises have increased R&D investment, tackling key technologies such as core algorithms and chip architectures, actively producing high-quality patent achievements, striving to explore frontier technologies, and firmly grasping the initiative in China's future technological competition. To address the difficulties in determining copyright for AIGC, this article clarifies judicial determination standards from four aspects: the originality of AIGC, copyright ownership, infringement determination, and fair use.

## 4.1. Judicial determination standards for the originality of AIGC

### 4.1.1. Clarifying "human intellectual contribution" as the prerequisite for copyrightability

Under the approach of the subjective standard of originality, AIGC can satisfy the requirements of originality in copyright law. The rapid development of AI has broken the traditional "human-centric" concept of creation, forming a game between humans and AI in the copyright field. Some scholars, citing the corporate personhood system in civil law as an example, attempt to grant AI legal personhood, directly recognizing its subject qualification.[24] However, taking corporate organizations as an example, the basis for their being viewed as authors is that they can agree via employment or contract with other natural persons that the copyright of a certain work is enjoyed by the legal person; yet, such a meeting of minds does not necessarily exist for AIGC. Furthermore, AI does not possess independent property, and machines cannot directly fulfill obligations; they still need to rely on the service providers behind them to bear corresponding responsibilities. AIGC is the intellectual achievement of human-machine collaboration; its model is designed by humans, and through human actions such as parameter setting, operational logic determination, and corpus training—along with repeated debugging by humans to achieve expected output standards—the entire process consistently reflects human participation and control.[25] Therefore, AIGC has not actually detached from the personality-based foundation of copyright law, and AI should be more inclined towards the instrumental attribute of use by natural persons for creation.

Against the background of automatic acquisition of copyright rights in China, judicial practice is actively responding to AI copyright issues. In the "AI-driven Text-to-Image" copyright case heard by the Beijing Internet Court,[26] the judge adhered to "human-centrism" in copyright determination, aiming to protect and strengthen the dominant position of natural persons in the development of the AI industry. However, different natural persons inputting the same prompts at the same time may not produce consistent content, and AI technology may produce

24) Zu Lu, "Re-exploration of the Status of AI as a Legal Fictional Subject: From the Perspective of Fictional Philosophy", *Journal of Beijing Institute of Technology (Social Sciences Edition)*, Vol.26 No.4(2024), pp. 152-163.

25) Zhang Ping, "Reasonably Defining the Legitimacy of Copyright in AI-Generated Content [张平：合理界定人工智能生成内容著作权合法性]", 中国知识产权报网(China Intellectual Property News Network), <https://www.iprchn.com/cipnews/news_content.aspx?newsId=140103>, 검색일: 2025. 8. 18.

26) See the Civil Judgment [(2023) Jing 0491 Min Chu No. 11279] by Beijing Internet Court.

different expressions based on data processing and habits. Therefore, in the formation process of a work, it is difficult to determine the proportion of contribution between natural person input and machine autonomous participation. Consequently, whether the prompt input by the natural person or the independent processing by the AI system contributed more to the formation of the final content often cannot be generalized; it must be analyzed in combination with specific generation scenarios, technological paths, and usage methods.

#### 4.1.2. Establishing type-based and tiered guidelines for originality judgment

In determining whether a subject matter constitutes a "work" protected by copyright law and whether a relevant party may be recognized as an "author", the idea-expression dichotomy remains a fundamental principle defining the scope of copyright protection. Article 9.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) explicitly stipulates that "copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such". Against the background of internet and artificial intelligence technologies, this principle still applies to the originality assessment of new forms of expression. In judicial practice, the identification of copyright subject matter should still be based on the expression, while accommodating new forms of expression spawned by artificial intelligence technologies.

Scholarly opinions diverge on this issue. Some scholars uphold the statutory closed-list of work types, arguing that creations that cannot be classified into the types explicitly enumerated in current legislation should not be granted copyright protection, nor should their originality be recognized.[27] By contrast, others maintain that the types of works listed in copyright law are merely illustrative and indicative, and that new types of intellectual creations satisfying the originality requirement should also be protected.[28] Given the need for stability and predictability in judicial decisions, the originality assessment of AIGC outputs should be conducted within the framework of the statutory work types under existing copyright law, taking into account the technical characteristics of AI-generated content.

For new forms of expression emerging in the artificial intelligence era, typified and hierarchical guidelines for originality assessment may be established to provide courts with more workable criteria. Rather than taking the "extent of a user's intellectual input" or "level of contribution" as the core basis for originality, this approach focuses on the objective originality of the final expression. By integrating the expressive features of different content types, it forms observable and verifiable adjudication rules, thereby achieving a more stable balance between technological

27) Wang Qian, "On Statutory Types of Works: Concurrently Commenting on the 'Musical Fountain Case'", *Law Review*, Vol.37 No.3(2019), pp. 10-26.

28) Chen Hu, "Identification of Work Types for New Intellectual Achievements in Copyright Law", *Electronic Intellectual Property*, Vol.5(2024), pp. 58-69.

innovation and copyright protection.

In specific judicial determinations, originality may be assessed in a typified manner according to the expressive forms of AIGC outputs: for literary generated content, originality may be evaluated based on whether the final text demonstrates individualized character portrayal, plot arrangement, structural design and narrative expression that meet the minimum threshold of creativity required for originality; for artistic and graphic generated content, an objective assessment may be made as to whether the expressive elements of the output—including composition, color, lines and visual effects—constitute a distinct aesthetic expression distinguishable from existing works; for audio generated content, originality may be established by examining whether the final auditory expression—such as melody, rhythm, style and timbre—exhibits identifiable individualized characteristics.

This assessment framework does not presuppose quantitative proof of a user's internal intellectual contribution. Instead, it is grounded in the objective originality at the expression level, which is consistent with the fundamental rationale of the idea-expression dichotomy, avoids judicial difficulties arising from the inability to precisely measure user contribution, and better aligns with the inherent logic of AIGC generation mechanisms and the copyright system.

## 4.2. Judicial adjudication rules for AIGC copyright ownership

### 4.2.1. Respecting the principle of party autonomy

In a market economy environment, the principle of party autonomy is an important guarantee for stimulating the proactive initiative of civil subjects and resisting illegal interference. Regarding the issue of AIGC copyright ownership, the principle of party autonomy should be one of the important factors for consideration. That is, after determining that AIGC constitutes a work in the sense of copyright law, when judging its copyright ownership, priority should be given to considering party autonomy, thereby effectively balancing copyright interests in the development of AI technology.

Against the macro background of new quality productive forces, market entities in different fields need to achieve innovation and value creation through cooperation. Allowing parties to autonomously agree on AIGC copyright ownership conforms to current market laws and is conducive to promoting the healthy development of the market. Additionally, regarding the balance of interests among multi-party subjects, AIGC involves the interests of multiple subjects, and different subjects focus on different interests: technology developers may focus more on technological innovation and protection, while users focus more on the use and dissemination of content. In the aforementioned "Spring Breeze" case,[29] the court also considered relevant provisions in the product agreement when judging the copyright ownership

29) See the Civil Judgment [(2023) Jing 0491 Min Chu No. 11279] by Beijing Internet Court.

of the image in question. Therefore, considering negotiated agreements among multi-party subjects can protect rights and interests related to technology for developers while also satisfying users' reasonable demands for generated content.

To leverage the vitality of market entities and the self-regulating function of society, it is necessary to take private law autonomy as the principle; however, to overcome the limitations of private law autonomy functions and maintain market transaction order, necessary restrictions are also required.[30] Therefore, although the principle of party autonomy should be respected when judging AIGC copyright ownership, courts should still conduct necessary review and supervision of the parties' agreements during adjudication to ensure they do not violate mandatory legal provisions or social public interests. For agreements that clearly damage social public interests or violate basic principles of intellectual property protection and other unreasonable circumstances, the court should adjust them according to law or deem them invalid. Thus, as long as the agreement is a true expression of the parties' intent and circumstances such as fraud or duress do not exist, its legality should be recognized. Specifically, if the developer and the user explicitly agree in the contract that the AIGC copyright belongs to the user, and this agreement complies with legal provisions, the court should prioritize judging copyright ownership based on this agreement.

#### 4.2.2. Emphasizing the user as the core

Article 11 of China's *Copyright Law* stipulates that copyright belongs to the author, meaning the person who created the work and contributed creative intellectual labor to the work, including natural persons and legal persons who organize creation. According to common AI product types currently available, AI technology developers focus more on the construction of optimized algorithms and often lack creative thinking regarding the massive specific generated content output after the complete use of the AI. In the process of AI content generation, AI technology developers will consider designing certain algorithmic programs in advance to avoid discussions involving sensitive topics such as politics, religion, ethics, and morality, pre-emptively avoiding content in AI-generated products that violates laws, regulations, ethics, morality, and public order and good customs. Although these designs also influence the final generated result, in reality, this behavior is more of a compliance act to observe laws, regulations, and public order and good customs. According to the subjective standard of originality, protection under copyright law is granted as long as there is independent creation without plagiarism or copying of others' results, emphasizing the author's subjective consciousness and creative behavior.[31] Such compliance behavior cannot be viewed as an original intellectual

30) See Wang Liming, "The Civil Code: Guarantee for the Modernization of State Governance System", *Peking University Law Journal*, Vol.32 No.4(2020), pp. 847-864.

31) Yang Shuxing, "Subjective Standards for Judging Work Originality", *Electronic Intellectual Property,* No.7(2007), pp. 64-65.

activity; from this perspective, the possibility of AI technology developers becoming authors is low.

In current domestic and international cases related to AI copyright disputes, courts have also determined that the content in question in each case was produced based on the intellectual contribution of the AI user, reflecting the user's personalized expression, and used this to determine that the user enjoys the copyright of the content in question. For example, in the US case regarding the virtual work created by Thaler (*Thaler v. Perlmutter*),[32] the court held that even though copyright should advance with the times, human intellectual contribution remains the core condition for copyrightability; when the plaintiff applied for copyright, he did not mention his own original intellectual labor, so his work could not pass the copyright registration review. Similarly, according to the aforementioned relevant cases in China, courts have also explicitly stated that creation completion by a natural person remains a necessary condition for a work under the *Copyright Law*. Therefore, based on the "Intellectual Contribution Theory," in the adjudication of AIGC copyright ownership disputes: first, if there is an agreement, it should be handled according to the agreement; if there is no agreement, emphasis should be placed on the user as the core—that is, the subject who can deeply participate in the creation process through methods such as inputting instructions, adjusting parameters, and screening results.

## 5. Conclusion

The controversy over the copyrightability of AIGC is not only a direct challenge to the legal system by technological change but also a profound reflection of the reconstruction of the knowledge production paradigm in the evolution of human civilization. The ownership allocation system behind it represents a great attempt by copyright law to respond to technological change and industrial interest distribution demands. Against the background of the vigorous development of new quality productive forces, we need to defend the high ground of "human-centrism" even more to resist the impact of technological progress on the bottom line of creation. Constructing a new framework for determining works, with "human intellectual contribution" as the essence and the "collaborative relationship between humans and algorithms" as the yardstick, is the premise for copyright law to answer the question of AIGC copyrightability and clarify AIGC copyrightability. Under the philosophy of respecting the principle of party autonomy, emphasizing the core status of the user in AIGC generation and unfolding the design of the AIGC copyright distribution system accordingly is an important method for copyright law to reasonably allocate knowledge value and achieve a balance of interests under the form of new quality productive forces. Only by seeking a balance between innovation

32) Thaler v. Perlmutter, Civil Action No. 22-1564 (BAH), United States District Court for the District of Columbia, 2023.

incentives and ethical constraints, and establishing a dialogue between technological rationality and the humanistic spirit, can a new ecosystem of copyright law for sustainable development be truly constructed, enabling copyright law to radiate new vitality in the era of digital civilization.

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