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Protecting the persona: personality rights take center stage

As challenges like deepfakes and AI-generated likeness continue to grow globally, Ranjan Narula, Swati Dalal, and Vanshika Oberoi of RNA, Technology and IP Attorneys, discuss the evolution of personality rights in India as courts increasingly recognize the need for legal protections against the unauthorized commercial exploitation of individual identity.

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AI-generated content: Chinese courts' shifting views on copyright

As AI-generated creative works continue to grow and copyright law remains without corresponding updates, Bin Zhang and Kehang Li of CCPIT Patent and Trademark Law Office examine key cases illustrating the evolving judicial stance on protecting AI-created works in China.

With the rapid development of artificial intelligence (AI) technology, AI-generated content is being produced at a pace beyond imagination. At the same time, the variety of such content continues to expand – from texts to images to videos. As the sophistication of such content grows, one question becomes increasingly critical: can AI-generated content receive protection under copyright law, just like works created by humans?

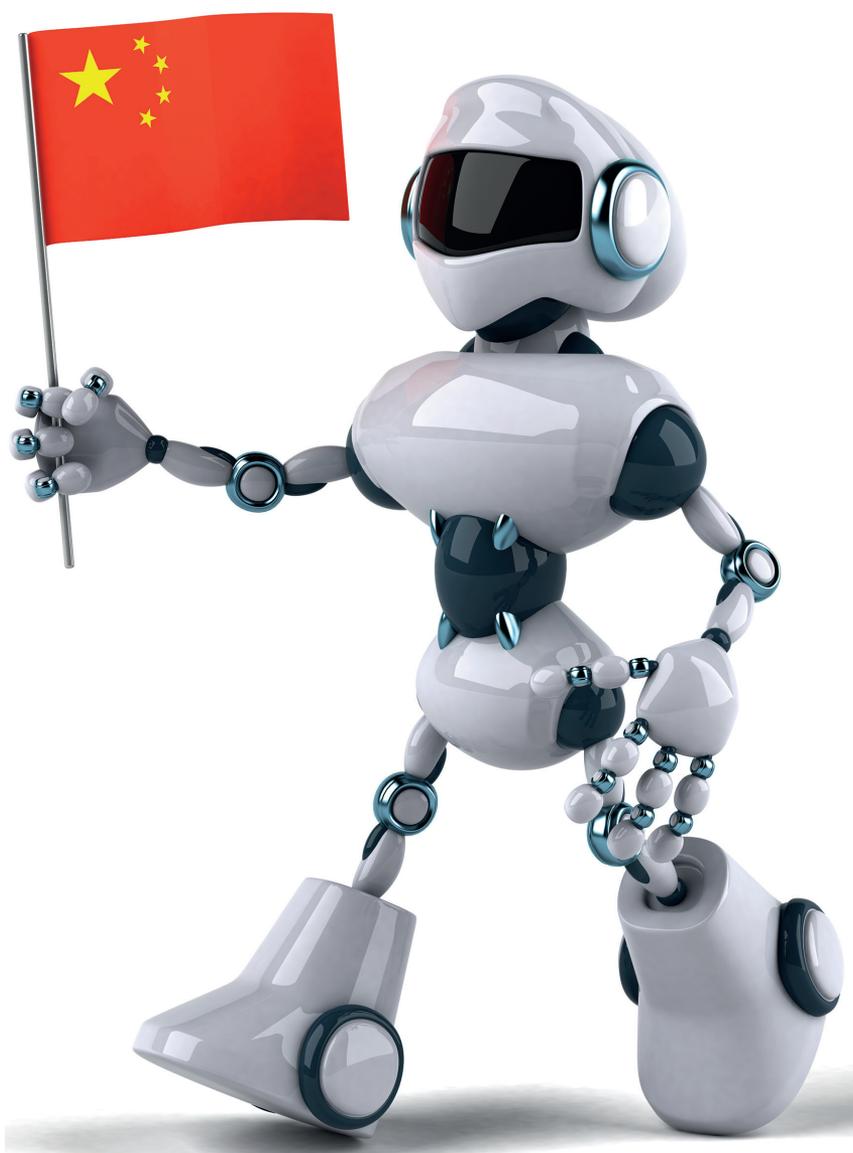
In China, although the copyright law has not yet been amended to address AI-generated content specifically, several courts have already responded to this issue through judicial decisions. These cases offer insight into how Chinese courts apply the law and approach such disputes, providing valuable guidance for copyright holders in their legal practice in China. This article analyzes and summarizes the current judicial stance in China on the legal nature of AI-generated content by reviewing three representative cases.

Case 1: *Shenzhen Tencent Computer Systems Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd.* regarding copyright infringement and unfair competition dispute

(Case No.: (2019) 粤 0305 民初 14010)

Facts

Dreamwriter is an AI writing assistance system that was developed by an affiliate of the Plaintiff. In 2018, employees of the Plaintiff used this AI writing software to generate an article about stock market reports and comments. The article was published on the Plaintiff's official website, with a note at the end stating, "This article was automatically written by Tencent's Dreamwriter." Subsequently, the Defendant copied the



Résumés

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AI-generated content without authorization and published it on its own website. The Plaintiff therefore filed a lawsuit against the Defendant, demanding an immediate cessation of the infringement, a formal apology, and compensation for economic losses.

Judgment

The Court ordered the Defendant to compensate the Plaintiff for economic losses and reasonable litigation costs totaling RMB 1,500, while dismissing the Plaintiff's other claims. Neither party appealed.

Court's reasoning

The Court identified one key issue in this case as whether the AI-generated article could constitute a work under copyright law. The disputed article appeared to be a work and was reproducible.



Bin Zhang



Kehang Li

“
If the user employs AI image software as a tool and the resulting content reflects the user's original intellectual input, it should be protected as a work under copyright law.”

Therefore, the primary question was whether it possessed originality – a mandatory requirement for a piece of content to be identified as a “work” under Chinese copyright law. The Court applied two criteria to determine whether the article met the originality standard.

The first criterion was whether the article was independently created and whether its external expression differed from existing works or had a minimal level of creativity. This is the most fundamental requirement for a work. In this case, the disputed article was generated by the Plaintiff's employees using an AI tool. Its external expression met the formal requirements of a literary work, and its content reflected the selection, analysis, and judgment of stock market information from that morning. The article was reasonably structured and had a clear logical expression. Consequently, the Court held that it satisfied the first criterion of originality.

The second criterion was whether the process of generating the article reflected the creator's personalized choices, judgments, skills, and other factors. In this case, throughout the article generation process, key aspects such as the selection of data types, the setting of trigger conditions, the choice of article framework templates, and language materials were intentionally selected and arranged by the creative team. The Court held that such selections and arrangements satisfied the second criterion of originality.

Finally, addressing potential doubts, the Court further reasoned that the actions of the Plaintiff's employees constituted “creative” acts. According to Article 3 of the *Implementing Regulations of the Copyright Law of the People's Republic of China*, “creation” refers to intellectual activities that directly produce literary, artistic, or scientific works. Therefore, in determining whether an act constitutes “creation,” consideration should be given to 1. whether it can be identified as an intellectual activity, and 2. whether it has a direct connection to the expression of the work. As detailed above, the actions of the Plaintiff's employees in selecting data types, processing data formats, and setting language materials constituted intellectual activities. Although there was a temporal gap between the creative team's relevant arrangements and the actual generation of the article, it did not preclude such acts from being defined as creative.

Case 2: *Li v. Liu* regarding infringement of the right of authorship and the right of communication through information network (Case No.: (2023) 京 0491 民初 11279)

Facts

On February 24, 2023, the Plaintiff, Mr Li, used the AI tool Stable Diffusion to generate an image of a young lady. He posted the image on his

social media on February 26. On March 2, 2023, the Defendant, Ms Liu, published an article on her social media, using the said image as an illustration without authorization and removing the authorship watermark. Mr Li argued that Ms Liu's actions infringed upon his rights of authorship communication through an information network and sought compensation for economic losses and a public apology.

Judgment

The Court ordered the Defendant to make a public apology to the Plaintiff and pay compensation for economic losses in the amount of RMB 500. Neither party appealed.

Court's reasoning

The Court identified the core issue as whether the disputed image constituted a work. Under Chinese copyright law, a work must meet the following criteria:

1. It falls within the literary, artistic, or scientific domains;
2. It is original;
3. It possesses a definite form of expression;
4. It is an intellectual achievement.

In this case, requirements 1 and 3 were undisputed, so the Court's analysis focused primarily on requirements 2 and 4.

Regarding the requirement of being an "intellectual achievement," the Court reasoned as follows:

The entire process, from the Plaintiff's initial conception of the image to his final selection of the specific output, involved substantial intellectual input. This included designing the character's presentation, selecting and sequencing prompts, setting relevant parameters, and ultimately choosing one image that met his expectations. The disputed image embodied the Plaintiff's intellectual input, thereby satisfying the "intellectual achievement" requirement.

Regarding the requirement of originality, the Court reasoned as follows:

First, the Plaintiff's use of prompts to design elements such as the character and its presentation, along with parameter settings defining the composition and layout of the image, which reflected his personalized choices and arrangements. Second, after generating the initial image, the Plaintiff continued to refine and adjust the output by adding prompts and modifying parameters.

“Following this trend, it is conceivable that in the future, the scope of protection may extend to AI-generated videos, music, and other forms of content.”

This process of adjustment and selection demonstrated the Plaintiff's aesthetic choices and personal judgment. Consequently, the disputed image was found to possess originality.

Case 3: *Feng v. Zhangjiagang Dongshan Culture Communication Co., Ltd.* regarding copyright infringement and unfair competition dispute

(Case No.: (2025) 苏 05 民终 4840)

Facts

The Plaintiff, a designer using AI tools for creation, designed and completed the "Illusory Wings Transparent Art Chair" series in August 2023, publishing the works on the social media platform Xiaohongshu. The Defendant initially approached the Plaintiff on Xiaohongshu regarding a potential collaboration on this series, but was rejected. Subsequently, the Defendant launched and promoted a "Butterfly Chair" product for sale. The Plaintiff alleged that the Defendant's Butterfly Chair product was substantially similar to her artistic work. The Plaintiff therefore sued for copyright infringement and unfair competition.

Judgment

The Court dismissed all the Plaintiff's claims.

Court's reasoning

The Court identified the core issue as whether the AI-generated image constituted a work protected by copyright. To resolve this, the Court established the criterion of "original intellectual input" – a combination of originality and intellectual achievement. Originality requires that the work be independently created by the author and reflect their personalized expression. Intellectual achievement requires that the content embody the intellectual input of a natural person.

The Court reasoned that content generated primarily by AI image software, where the user merely inputs a prompt to generate an image on a related theme, should generally not be recognized as a work. In such cases, the AI tool still plays the dominant role, and the user's originality cannot be demonstrated.

However, if the user employs AI image software as a tool and the resulting content reflects the user's original intellectual input, it should be protected as a work under copyright law. Acts that can demonstrate such original intellectual input include refining, selecting, and polishing the initially generated image by adding prompts and modifying parameters, and making personalized choices and substantial contributions to the image's expressive elements, such as its layout, proportion, perspective, compositional elements, color, or lines.

In this case, the Plaintiff failed to prevail precisely because she did not preserve the original records from the image creation process. Consequently, the Court found they could not prove the "original intellectual input" had been invested in the creation process. Furthermore, although the Plaintiff attempted to reproduce the image to show its generation process during the Court hearing, the final resulting image differed significantly from the disputed image, and thus the demonstration was not accepted by the Court.

The evolving stance of Chinese courts

The three cases discussed above are all important precedents in Chinese copyright law regarding AI-generated content. Collectively, these cases reflect, to some extent, the evolving stance of Chinese courts regarding the copyrightability of AI-generated content.

Existing judicial practices make it clear that various types of AI-generated works have been protected under Chinese copyright law, including textual and image content. Following this trend, it is conceivable that in the future, the scope of protection may extend to AI-generated videos, music, and other forms of content.

Based on the standards applied by judges in existing cases for determining copyrightable works, the core criteria – whether for text or images – are "originality" and "intellectual achievement," or, as articulated by the Court in Case 3, "original intellectual input." According to this standard, for AI-generated content to be recognized as a work, merely providing simple instructions (such as entering basic prompts) is insufficient, as the user has not expended the minimum level of intellectual labor. For instance, in Case 2, the disputed image was recognized as a work precisely because the Plaintiff, during the image generation process, not only input hundreds of prompts but also made multiple adjustments by modifying various parameters and adding prompts through several iterations before having the final output. Had the Plaintiff merely instructed the AI to "generate an image of a young, beautiful woman," such an act would not meet the required standard for copyright protection.

A potential question that may arise is: since the judges applied the same legal standard, why did Cases 2 and 3 have opposite outcomes? The difference does not stem from any variance in the legal standards applied but rather from the evidence presented by the parties. In Case 2, the Plaintiff submitted a video recording of the entire process of modifying prompts and parameters, ultimately reproducing the disputed image. In contrast, in Case 3, the Plaintiff failed to provide similar evidence. As a result, they

“ During the process of creating with AI tools, creators should diligently retain all prompts, parameters, and modification histories. ”

were unable to substantiate the "original intellectual input" that generated the disputed image.

Based on the above judicial practices, creators utilizing AI tools who seek copyright protection in China should consider the following key takeaways:

First, preserve comprehensive creation records. During the process of creating with AI tools, creators should diligently retain all prompts, parameters, and modification histories. If intermediate results exist before the final version is generated, it is highly recommended to preserve these as well, as they can serve as evidence of the intellectual effort put in.

Second, conduct copyright registration. In China, copyright holders may voluntarily register their works. Although registration is not a mandatory procedure for acquiring copyright, it serves as important evidence of ownership. Therefore, it is recommended that authors complete copyright registration as early as possible after creation, thereby strengthening their position in potential future disputes over ownership.

What needs to be noted is that the quality and diversity of AI-generated content are constantly improving, but its creation process often lacks transparency. In addition, the characteristics of some AI models make it difficult to trace their creation process, which is a pain point for claiming ownership of AI works. With updates to and improvements in laws, it is believed that more people will benefit from the rights and interests of AI works. At the same time, given the internationalization of AI, it is necessary to formulate unified international rules to ensure consistent copyright protection for AI-generated content. Of course, enhancing global transparency around technology can also play a significant role in promoting the copyright protection of AI-generated works.

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