

THE COPYRIGHTABILITY OF AIGC

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Abstract: When studying the copyrightability of AIGC, we should focus on analyzing authorship and originality. First, under the backdrop of new technologies, the core approach of defining authorship based on the actual creator remains unchanged, similar to traditional creative models. The significance of establishing authorship in copyright law lies in assessing the creator's causal responsibility for the creative expression produced. Consequently, the focus shifts to how causal relationships can explain the impact of pre- and mid-creative phase actions on authorship. Second, within China's legal practice, originality is typically decomposed into two dimensions—"independence" and "creativity"—for interpretation and definition. Firstly, "independence" represents the independence of the creative process, signifying a work independently completed by the author and originating from their labor, rather than plagiarized, altered, or appropriated from others. Secondly, "originality" denotes creativity, meaning the work must embody the author's intellectual creation and individual expression, encompassing a minimum level of creative labor.

Keywords: Generative AI; AIGC copyrightability; Originality; Copyright

1 INTRODUCTION

From a copyright law perspective, the foundation for users to obtain AIGC copyright hinges on whether they can qualify as authors under copyright law.

First, examining the entire AI chain reveals the feasibility of determining authorship. Under the current legal framework, only natural persons or groups of natural persons can qualify as authors under China's Copyright Law. Within the generative AI ecosystem, human contributions primarily involve the developers, owners, providers, and users of AI large models. Among these entities, only developers and users can potentially make original contributions to AIGC. Currently, generative AI models lack free will and cannot be legal entities. Therefore, when users generate content using AI models, the process fundamentally remains human creation using tools. The contribution of AI model designers lies solely in creating the "creative tool." In the actual AI-generation process, since they possess neither creative intent nor meticulous design, they cannot be considered authors of AIGC[1].

Second, based on explicit legal provisions and fundamental concepts, we further determine the possibility of AI users becoming authors. First, the prerequisite for "author" under copyright law is stipulated in Article 11, Paragraph 1 of the Copyright Law: "Copyright belongs to the author, except as otherwise provided in this Law[2]." Second, the nature of 'author' is defined in Article 11, Paragraphs 2 and 3: "A natural person who creates a work is the author[3]. Works created under the direction of a legal person or unincorporated organization, representing the will of such entity and for which the legal person or unincorporated organization assumes responsibility, shall be deemed authored by that legal person or unincorporated organization."

Based on these provisions, under China's current legal framework, two conditions must be met to qualify as an author: First, authorship is restricted to natural persons, legal persons, or unincorporated organizations. Therefore, in the AIGC creation process, to qualify as an author under copyright law, the user must be a natural person or a group of natural persons. Computer software or systems such as AI models do not meet the identity requirement and cannot be authors. Second, as previously stated, AI model designers cannot determine the specific output of AIGC; only users who directly create AIGC can be authors. The definition of "creation" is stipulated in Article 3 of the Implementing Regulations of the Copyright Law: "Creation, as referred to in the Copyright Law, means the intellectual activity that directly produces literary, artistic, and scientific works. Organizing work for others' creation, providing consultation or material conditions, or performing other auxiliary work shall not be deemed as creation." Therefore, when a user directly triggers the generation of output content during the AIGC process and can control the presentation of the entire generated content, the user's intent is embodied in the final work. At this point, such original intellectual input meets the threshold for "creation[1]." In summary, if the conditions stipulated by the Copyright Law are satisfied, an AI user can become the author of AIGC.

Thus, analyzing the conditions under which a user qualifies as an author under copyright law forms the crucial legal foundation for determining how users can obtain copyright over AIGC. This chapter will explore the conditions for users to become authors under copyright law, starting from the core requirement of originality in determining works, and integrating the fundamental principle of the idea-expression dichotomy. This will further examine the copyrightability of AIGC.

1.1 Copyright Law and the Causal Relationship of Authorship

The determination of authorship has always been a pivotal element in copyright adjudication. The significance of establishing authorship in copyright law lies in assessing when a creator bears causal responsibility for the creative expression they produce. The centrality of causation and causal responsibility in this phase is self-evident. Consequently, the focus shifts to how causation can explain the impact of a creator's actions during the pre-creative, mid-creative, and other stages on their authorship status.

Thus, tracing the causation underlying authorship encompasses both factual (i.e., *de facto* creation) and normative (i.e., *de jure* creation) dimensions. The former examines the link between the work and the presumed author from a purely epistemological perspective, while the latter evaluates this connection through the lens of copyright objectives and policy significance. Under this layered evaluative framework constraining causation, the threshold for authorship has become more stringent. Even when evidence indicates a person contributed to a work's creation—whether absolutely or relatively—courts still conduct a specific analysis to determine whether such contribution should serve as evidence for establishing authorship[4].

First, as a prerequisite, authorship must align with the requirements of copyright law regarding the subject matter of copyright protection and the nature of the author's work to satisfy the logical chain of causation. For example, the U.S. Seventh Circuit Court of Appeals determined that the right of publicity, as part of personality rights, falls outside the scope of subject matter protected under the U.S. Copyright Act, and thus cannot be afforded copyright protection. In *Toney v. L'Oreal USA, Inc.*, a dispute over portrait rights led to a discussion of jurisdictional conflicts between the Internet Redress and Privacy Act (IRPA) and the Copyright Act: Photographs of advertising model Toney were used in a hair care product sold by Johnson & Johnson[5]. After L'Oreal acquired the product, it continued using the photographs in its advertising without Toney's permission. Toney filed suit alleging infringement of her right of publicity. First, the court analyzed whether the work in question met the fundamental requirement of being fixed in a tangible medium, concluding that the right of publicity does not fall within the scope of subject matter protected by copyright under Section 102 of the U.S. Copyright Act. Section 102 defines copyrightable subject matter as "original works of authorship fixed in any tangible medium of expression," including pictorial works. Regarding the meaning of "fixed," the law explains that a work is fixed in a tangible medium if it can be reproduced in a form that is sufficiently permanent and stable to be perceived, reproduced, or otherwise communicated for more than a transient period. The distinctiveness of portrait rights lies precisely in the fact that a person's likeness constitutes part of their personality—not something created by an author, nor is it fixed. Even if a person's likeness can formally be fixed in a photograph protected by copyright, this cannot fundamentally alter the nature of portrait rights as personality rights unprotected by copyright. Therefore, the court determined that Toney's likeness was not fixed in a tangible medium of expression, and thus his portrait rights did not constitute an author's work.

Second, prior to the creation of a work (especially a collaborative work), the author's intent (or mutual agreement) constitutes another prerequisite for establishing causation. For example, the U.S. Ninth Circuit Court of Appeals held that co-authors of a jointly created work must demonstrate that both parties reached an agreement—that they both intended the work to be published as a collaborative creation. In *Aalmuhammed v. Lee*, Aalmuhammed served as Bruce Lee's technical advisor for the film *Malcolm X*, making substantial contributions including technical support, creative assistance, and script revisions[6]. Yet upon the film's release, Aalmuhammed was credited only as "Islamic Technical Advisor." Aalmuhammed contended the film constituted a "collaborative work," making him a joint copyright owner entitled to profit accounting. The U.S. Ninth Circuit Court of Appeals ruled that collaborative works require mutual intent to collaborate. Objectively, neither party declared themselves a co-author during the creative phase, and Aalmuhammed failed to establish such an agreement with the authors. Consequently, Aalmuhammed lacked control over the film and could not qualify as a collaborative author.

Regarding authorship of new media artworks like photography and film, the U.S. Supreme Court established a framework in *Burrow-Giles Lithographic Co. v. Sarony*[7]. In the dispute over whether the author of a photograph should be the photographer who set up the scene and pressed the shutter, the person who used the photograph as a plate to make prints, or the subject Oscar Wilde who provided some creative suggestions for the shoot, the U.S. Supreme Court ultimately ruled that the photographer was the author. It stated that the author of a photograph should be "the person responsible for planning the shoot and actually generating the photograph. The photographer's arrangement of subjects and background elements constitutes the effective cause of the photograph." Thus, the Supreme Court established the definition of an author as both the innovator or principal creator of a work deserving copyright protection, and the individual who genuinely manifests, creates, or realizes an idea, fantasy, or imagination. It is evident that the *Giles* case defines authorship as belonging to the initiator of the entire work—the "mastermind." Therefore, in a film, without a pre-existing contract, this definition typically limits authorship to those holding artistic control over the entire film, such as the producer, director, or screenwriter.

In the absence of a prior contract, the following factors may serve as methods to determine whether the requirements for joint authorship are met. First, whether the author exercised control to "supervise" the creation of the entire work. This typically refers to the person who actually conceived the visuals, arranged the positioning of characters and scenes—that is, the facilitator of the work's generation, or the inventor or leader who created or realized the idea. Second, co-authorship may be inferred through objective manifestations of a shared creative intent. For instance, in *Thomson v. Larson*, Larson held sole decision-making authority over the entire musical[8]. His consistent assertion of sole authorship and objective conduct—signing agreements as the sole author—demonstrated his lack of intent to co-author with Thomson. In such cases, Larson's lack of joint intent could be inferred from objective manifestations, thereby avoiding the pitfalls of relying solely on subjective intent. If one co-author conceals their intent to retain sole

rights to the work from the other, this could constitute fraudulent conduct. Thus, regardless of circumstances, control remains the decisive factor in determining authorship[6].

In summary, when determining authorship, courts typically consider multiple factors in assessing the causal relationship for copyrightability. By comparing and distilling these factors, three general principles emerge. These principles form a binding framework for courts' analysis of copyrightability, through which the elements of copyrightable causation are applied: the first principle is full control over the creative process; the second is proportionality; and the third is personality conflict. Analyzed sequentially, these principles exhibit a coherent logical relationship[4].

2 LEGAL ANALYSIS OF ORIGINALITY

Within the mainstream academic discourse on copyright in China, originality is typically dissected into two dimensions: "independence" and "creativity" for interpretation and definition. First, "independence" represents the independence of the creative process, referring to works independently completed by the author and originating from the author's labor, rather than plagiarized, altered, or appropriated from others. Two scenarios satisfy the "independence" requirement: one involves original creation—where the author independently conceives and completes the work from scratch. The other involves re-creation—where, despite using public domain materials or others' works, the final expression is achieved through the author's independent labor and arrangement, thereby meeting the "independence" criterion. Therefore, under the traditional application of copyright law, creative acts meeting the "originality" requirement essentially satisfy the condition that the author has exerted independent intellectual labor. Examples include annotating or translating classical texts with personal insights, or creatively processing photographic materials to form new visual works.

Second, "creativity" refers to the work embodying the author's intellectual creation and personal expression, meaning it must contain a minimum level of creative labor. The "minimum level of creativity" standard does not require the work to possess high literary, artistic, or academic value, nor does it demand unprecedentedness (i.e., it does not require 'originality' or 'novelty'). Instead, it only requires that the work embodies the author's personal choices, judgments, arrangements, designs, and thoughts, resulting in an expression that exhibits identifiable differences from existing works. In this regard, Chinese judicial practice aligns with the evolving trends in common law jurisdictions by abandoning the "sweat of brow" doctrine: Chinese courts explicitly hold that purely mechanical labor involving substantial investment of time, money, and effort, yet yielding no creative output, fails to meet the "creativity" requirement.

Therefore, if users can satisfy this prerequisite set by the author, the AIGC they generate possesses the foundational elements to qualify as a work. At this stage, determining whether AIGC can constitute a work under copyright law serves to establish its copyrightability.

Article 3 of the Copyright Law stipulates: "The term 'work' as used in this Law refers to intellectual creations in the fields of literature, art, and science that possess originality and can be expressed in a tangible form[9]." "Based on the above provision, examining whether the subject matter claimed by the plaintiff constitutes a work requires consideration of the following elements: in terms of content, whether it falls within the fields of literature, art, and science; in terms of nature, whether it possesses originality and a certain form of expression; and in terms of form of expression, whether it constitutes the presentation of intellectual achievements. Among these, "originality" serves as the core element for determining a work under copyright law, yet it lacks a clear definition within the Copyright Law itself. Consequently, judicial interpretations fill this gap. Article 15 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Disputes Involving Copyright (Revised in 2020) stipulates: "Where works on the same subject matter are created by different authors, and the expression of the work is independently completed and possesses creativity, the respective authors shall be deemed to enjoy independent copyright."

According to this provision, the literal interpretation of "originality" requires that the work be independently created and possess creative merit. From an operational perspective, 'originality' demands that the "work" asserted by the plaintiff is not plagiarized from another's work and exhibits a certain degree of discernible distinctiveness from others' works. Reviewing copyright practices across major global jurisdictions, the prevailing view centers on defining originality solely by its "presence or absence," without debating the "level" of its threshold. In other words, the mere existence of originality satisfies this requirement, without demanding specific degrees or proportions[1]. For instance, the landmark *Feist* case established the minimum standard for copyright protection: "Copyright does not protect works devoid of any spark of creativity or where that spark is negligible[10]." This defines originality as requiring a degree of creativity beyond mere independent creation. Furthermore, examining China's recent judicial practice, new-type courts such as the Beijing, Guangzhou, and Hangzhou Internet Courts are actively shaping the nation's digital-era copyright protection system. They do this by continuously strengthening adjudication of cases involving new subjects and emerging industries—such as AI-generated content, data rights, vehicle networking, short videos, and online games—all of which represent new forms of productive forces. Moving forward, these internet courts will further clarify adjudication rules for novel case types, enhance intellectual property protection for emerging subject matter, and precisely define liability boundaries for new dissemination behaviors. This will establish leading judicial precedents for internet-related rulings and fully leverage the specialized adjudication functions of internet courts[11].

3 THE INTELLECTUAL LABOR DURING CREATION

From an objective perspective, “creation” originates from acts that directly produce a work—specifically, when users contribute sufficient original expression that directly triggers the creation process. Aligned with the Copyright Law's legislative purpose of incentivizing creation and protecting original intellectual achievements, “intellectual activity directly producing... a work” should be interpreted as the user's creative act directly resulting in the generation of a specific work, rather than requiring every expressive detail within the work to originate from the user[12].

Under copyright law, even if an author did not directly create all original expressions within a complete work, they may still legally hold copyright to that work provided they made a substantial original intellectual contribution. Derivative works serve as the best evidence for this principle. A derivative work refers to a new, original work created based on an existing work through adaptation, translation, annotation, or compilation. Their creation requires retaining the fundamental expression of the original work while incorporating new intellectual achievements, and must obtain prior permission from the original copyright holder. According to Article 13 of the Copyright Law of the People's Republic of China, the copyright of derivative works is independently held by the adaptor, translator, or other derivative author, but the exercise of such rights must not infringe upon the copyright of the original work[13]. Therefore, derivative works must embody the original intellectual labor of the secondary creator.

For instance, when translating *One Hundred Years of Solitude* from Spanish into Chinese, translator Fan Ye respected the original work's fundamental meaning while employing modern Chinese stylistic elements such as shorter sentences. This transformed obscure, complex sentences into localized expressions more aligned with Chinese reading habits. When publishing annotated editions of classical texts like *The Analects of Confucius*, editors add modern Chinese translations, historical context notes, and textual analysis to the original text, offering contemporary insights through fresh interpretations of ancient writing. When adapting popular online novels into TV dramas or films, screenwriters retain key characters and core plots while enhancing dramatic conflict and refining dialogue scenes, creating widely enjoyed literary and artistic works. These cases demonstrate two points: First, many expressions in derivative works originate directly from the original author, not the adapter. Second, although the adapter contributes only a portion of the work's expression, their original intellectual output still constitutes creation. This does not preclude copyright law from recognizing adaptation as a creative act that “directly produces... a work.”

By analogy, the logic establishing derivative works as meeting the requirement of originality equally applies to AIGC. At the AI input stage, users directly trigger the AI's creative process through prompt design and input. Only then can the AI system implement specific expressions via algorithms. Although the collaborative involvement of human users and AI systems during generation means the presentation of AIGC expression details stems from user-system cooperation, the original intellectual contributions made by users remain undeniable. Therefore, a user's creation using generative AI can still be regarded as a creative act of “directly producing... a work.”

In short, copyright law does not exclude protecting human intellectual achievements indirectly presented or generated through tools. Although in the AIGC generation process, the intellectual achievement is not directly output through the human body, it still satisfies the general requirements for a natural person's intellectual achievement because the human user's intellectual factors ultimately influence the content of the generated AIGC[12]. Thus, after meeting the “independence” condition discussed above, if the user can fulfill the “creative” condition—directly triggering the creative act and contributing sufficient original expression—AIGC may still qualify for copyrightability.

4 DETERMINING COPYRIGHT ATTRIBUTION FOR AIGC

Based on the above analysis, when AIGC satisfies originality and manifests as human intellectual achievement, it may be recognized as a work under copyright law. However, unlike the relatively clear attribution of copyright for traditional works, the generation process of AIGC often involves intellectual contributions from multiple parties. Therefore, after confirming the copyrightability of AIGC, the key issue that follows is determining the attribution of its copyright.

Firstly, under the current legal framework, China's Copyright Law recognizes “authors” exclusively as natural persons or their collective entities. Consequently, within the entire generative AI content creation process, potential authors are limited to natural persons participating in this ecosystem—primarily including developers, owners, providers, and end-users of AI large models. Among these, only developers and users typically make contributions that could potentially qualify as original work under AIGC. For developers, the key issue lies in whether their contributions—such as algorithm design, training data preparation, and model debugging—constitute original labor under copyright law.

Secondly, in judicial practice, Chinese courts have made explicit determinations regarding copyright attribution for AIGC. Taking the “first AI text-to-image case” (Chunfeng Pattern) as an example, the Beijing Internet Court ruled that the AI model developer lacked copyright subject qualification, affirming that the user (plaintiff) held copyright over the generated images in question. First, the court analyzed creative intent and expectations, noting that the developer neither possessed the subjective intent to create the image nor predetermined its specific content, and did not actively participate in the image generation process. Therefore, the developer should be characterized as a provider of a “creative tool.” Second, regarding intellectual contribution, the court held that while the developer invested intellectual effort in algorithm design and model training, their contribution primarily manifested in developing the AI model as a “tool,” not directly in the generated images themselves. Thus, the developer did not qualify as the author of the images. Third, based on the evidence in the case, the developer explicitly stated in the license agreement provided that it “does not claim rights to the output content,” further indicating that it does not assert copyright over the generated content. Concurrently, as the user, the plaintiff engaged in direct intellectual input and personalized selection through setting generation parameters, conducting multiple generations, and ultimately selecting the image. This process resulted in the

generated content embodying the user's original expression. Consequently, the court determined the plaintiff to be the author of the image and legally entitled to copyright.

5 CONCLUSION

In conclusion, when studying the copyright issues of AIGC, we should abide by the copyright establishment principles in traditional copyright laws. If AIGC constitutes an original intellectual creation, human creators can select and arrange content generated by generative AI according to their own creative intent, resulting in an original work that aligns with the creator's own creative ideas. In such cases, AIGC may possess copyrightability.

To argue for the copyrightability of AIGC, we must first deconstruct originality into two dimensions: "independence" and "creativity." Firstly, "independence" signifies the autonomy of the creative process, meaning the work is independently completed by the author and stems from their own labor, rather than being plagiarized, altered, or appropriated from others. Secondly, "creative" denotes the work must embody the author's intellectual creation and personal expression, encompassing a minimum threshold of creative labor. Second, establishing authorship for AIGC requires proving causation to determine when the creator bears causal responsibility for the resulting creative expression. Interpreting how the creator's actions during pre-production, mid-production, and other stages influence authorship through causation becomes paramount. The causal relationship tracing authorship encompasses both factual (actual creation) and normative (legal creation) dimensions[4]. When it can be demonstrated that there exists a direct relationship between the final content generated by generative AI and human operation, and that there is a necessary connection between human input and the AI's output, AIGC may potentially qualify for copyrightability.

COMPETING INTERESTS

The authors have no relevant financial or non-financial interests to disclose.

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