Proceedings of the 4th International Conference on Global Politics and Socio-Humanities
DOI: 10.54254/2753-7048/2026.33847

The Determination of the Reasonable Duty of Care for Providers of Generative Artificial Intelligence Services in China

Yuemeng Dong

School of Foreign Languages, Guangdong University of Technology, Guangzhou, China
dongyuemeng@mail.gdut.edu.cn

Abstract. With the continuous development of generative artificial intelligence, copyright infringement caused by providers of generative artificial intelligence services has been widely discussed. However, there are still deficiencies in the determination of the reasonable duty of care of generative artificial intelligence service providers. Therefore, this study takes generative artificial intelligence service providers as the research object, using the methods of normative analysis, case analysis, and comparative research, and analyzes the legal status of generative artificial intelligence service providers and the difficulties in determining their reasonable duty of care. Through research and analysis, this paper determines the legal status of generative artificial intelligence service providers and discovers that it is difficult to identify the reasonable duty of care of generative artificial intelligence service providers due to the particularity of their service structure and the limitations of the strict duty of care. Based on this, this paper puts forward the following suggestions: the generative artificial intelligence service provider should be defined as a special network service provider, and its reasonable duty of care should be based on the principle of technology neutrality, regulated hierarchically and identified dynamically according to the characteristics of its service structure.

Keywords: Generative Artificial Intelligence, Internet Service Provider, Reasonable Duty of Care, Technological Neutrality, Safe Harbor Principle

1. Introduction

With the development of generative artificial intelligence technology, the traditional copyright law has been challenged in all aspects. Furthermore, the principles of technology neutrality, safe haven, and red flag are difficult to directly adapt to the generative artificial intelligence service mode. In judicial practice, there is no consensus on whether the platform has a duty of care and the degree of the duty of care. Hence, this research focuses on the specific application of generative artificial intelligence service providers' subjective nature, the scope of reasonable care obligations, technology neutrality, the Safe Harbor Rules, and the Red Flag Principle in Generative artificial intelligence scenarios, to explore how to achieve a balance of interests between right protection and

© 2026 The Authors. This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/).

DOI: 10.54254/2753-7048/2026.33847

technological innovation, and clarify the boundary of reasonable care obligations that the platform should undertake.

2. Determination of generative artificial intelligence service providers

The generative artificial intelligence is problematic to define because the concept of it service provider is polysemy, its subject status is diverse, and its connection objects are diverse [1]. The diversity of its subject status is reflected in two different identifications in the same regulation. Furthermore, Interim Measures for the Management of Generative Artificial Intelligence Services (hereinafter referred to as the Interim Measures) stipulates that generative artificial intelligence service providers "shall bear the responsibilities of network information content producers and fulfill the obligations of network information security according to law", which defines their legal status as content producers [2]. However, Article 22 also stipulates that a generative artificial intelligence service provider "refers to an organization or individual that uses generative artificial intelligence technology to provide generative artificial intelligence services (including providing generative artificial intelligence services by providing programmable interfaces, etc.)" it is recognized that it has the legal attribute of a service provider [3]. At the same time, the pluralism of the connection objects of generative artificial intelligence service providers is reflected in its simultaneous connection with service hubs and multiple subjects, such as data providers, model developers, and function users.

That is why scholars have various opinions on the legal status of generative artificial intelligence service providers. On the one hand, generative artificial intelligence service providers are defined as product producers. Proponents of this view believe that it does not have the qualification of a legal subject, but the generative artificial intelligence service provider has dominant control over its content production process, and it is legitimate to assume the responsibility of content producers [4].

On the other hand, generative artificial intelligence service providers are defined as new network service providers, because the way of providing generative artificial intelligence is more like a way of offering services rather than simply selling a product, so they should take on the responsibility of network service providers [5]. Meanwhile, the key function of the new network service provider is the recreation of interactive, generated new content, which differs from the traditional network service provider's functional system, with information retrieval as the core. As a result, generative artificial intelligence service providers should be positioned as new network service providers [6].

Although Article 9 of the Interim Measures points out that it should bear the producer responsibility of network information content according to law, paragraph 2 of Article 22 also positions it as a generative artificial intelligence service provider, believing that it prefers to provide services rather than products. Therefore, if the generative artificial intelligence service provider is simply defined as a product producer, it will lead to the infringement determination of the artificial intelligence body of the generative artificial intelligence service provider simply applying the traditional general product producer infringement determination logic, resulting in its infringement results being difficult to determine. Although the generative artificial intelligence service providers are similar to the new network service providers, the new network service providers mainly obtain artificial intelligence network content for users, and the essence is to provide intermediate services rather than directly generating information. However, the generative artificial intelligence service not only provides users with new information generated through a large amount of learning, but also has the ability to self-learn. It can learn the core rules through the input information, and intelligently generate the digital text required by users in the process of interacting with human

DOI: 10.54254/2753-7048/2026.33847

beings. Therefore, generative artificial intelligence service providers can not be simply identified as new network service providers [7].

Therefore, the generative artificial intelligence service provider should be defined as a special network service provider. As a "special" new subject, it should set up a special, appropriate, and operable duty of care for it. The particularity of generative artificial intelligence service providers is martificial intelligently reflected in the difference between their core functions and those of other network service providers. Other network service providers are typically passive transmission, whose core is that the platform acts as a "pipeline" to transmit information for users instead of generating new content, changing the original content, or creating the original content. However, the core of generative artificial intelligence service providers is not simply to transmit information, but to actively recreate new content according to the original works. There are obvious differences in the artificial intelligence core functions between generative artificial intelligence service providers and other network service providers. Meanwhile, the regulations on the protection of the right to information network communication stipulate three different types of network communicators. Generative artificial intelligence service providers are neither network service providers that provide information storage space or search and link services, nor network service providers that automatically store other people's works, performances, audio and video recordings, and automatically provide service objects according to technical arrangements in order to improve the efficiency of network transmission, as stipulated in Article 21 [8]. As a result, generative artificial intelligence service providers should be regarded as a "special" brand-new subject, and set a special, moderate and controllable duty of reasonable care for them separately, so as to avoid simply applying the framework of reasonable care obligations of traditional network service platforms or general product producers, while recognizing their basic attributes as network service providers, and clarifying the service particularity of generative artificial intelligence in terms of autonomous content generation, algorithm depth control, etc.

3. The dilemma of determining the duty of reasonable care

The duty of reasonable care refers to the legal responsibility that the legal subject should take reasonable and prudent actions in order to foresee and avoid the consequences that may cause damage to others in a specific situation. In the theory of tort liability law, the duty of reasonable care is an abstract standard, which is called "the attention of a good administrator" in Roman law and "the necessary attention in transactions" in German civil law [9]. Generative artificial intelligence technology is the upgrading of Internet technology, which is cutting-edge and innovative. However, the use of generative artificial intelligence technology also leads to the dual value balance problem of technological innovation and curbing infringement. In this context, it is necessary to identify the reasonable duty of care of generative artificial intelligence service providers, but it must be recognized that due to the distinctiveness of its service structure and the limitations of strict duty of care in its field, there are practical difficulties in identifying the reasonable duty of care of generative artificial intelligence service providers. It must acknowledge the inevitably existing barriers, put forward scientific solutions grounded on the experience of comparative law and the actual situation of China, and reasonably identify the duty of care of generative artificial intelligence service providers.

DOI: 10.54254/2753-7048/2026.33847

3.1. Distinctiveness of service structure

The service structure of generative artificial intelligence martificial intelligencenly includes three stages: model algorithm and data governance, content generation and interactive service, platform operation and communication management. In the stage of model algorithm and data governance, because generative artificial intelligence needs to input plenty of training data from different platforms, the data sources are complex. As a result, avoiding collecting and learning a significant quantity of copyrighted works is not easy. Moreover, in the stage of content generation and interactive services, platform operation and communication management, because the generated content is uncontrollable, it is difficult to avoid the actual similarity with existing works, and it is also tough to be held accountable after the infringement occurs; Due to numerous subjects involved in the service, there are practical troubles in the attribution of tort liability; Because of the complexity of the infringement process, the relationship between the infringement and the damage result is vague [6].

3.2. Limitations of strict duty of care

Strict duty of care (also known as active duty of care) requires the duty bearers to exercise active duty of care throughout the whole service stage. In the field of generative artificial intelligence, it means that the service provider of generative artificial intelligence should ensure that the infringing content is not used without the permission of the copyright owner at any service stage. Once the infringing content appears, it will be presumed that it has a subjective fault. Although the implementation of the strict duty of care effectively ensures the absolute control of the right holder over its copyright, the model has problems that cannot be ignored, such as insufficient technical adaptability and high cost of independent supervision, which is not conducive to the sustainable, healthy, and stable development of the artificial intelligence industry. From a comparative perspective, the European artificial intelligence act effectively protects copyright from infringement, but also limits its development in the field of artificial intelligence [10]. In contrast, the autonomous duty of care represented by the United States means that the technology provider does not need to take active duty of care for the infringement risk generated in the process of technology application, but takes necessary measures to protect copyright after receiving the infringement notice from the right holder in time to avoid infringement charges [11].

In conclusion, the particularity of the service structure determines that the generative artificial intelligence service provider can not directly copy the method of identifying the reasonable obligation of traditional network technology, but needs to further identify the reasonable duty of care according to the characteristics of different service stages on the basis of learning from the experience of traditional network governance. At the same time, although the protection of copyright is indisputable, the implementation of a strict duty of care will not only increase the management burden of generative artificial intelligence service providers but also hinder technological development to a certain extent, violate the legislative purpose of copyright law to encourage innovation, and lead to the difficulty of realizing the coordinated development of right protection and technological progress.

4. The determination of reasonable duty of care

In the process of determining the reasonable duty of care at different stages of service, rule makers should learn to stand on the shoulders of giants - learn from better governance experience. Secondly,

DOI: 10.54254/2753-7048/2026.33847

the principle of technology neutrality, the principle of safe haven and the principle of red flag should be applied in combination with the national conditions. Last but not least, rule makers should clarify the hierarchical regulation and dynamically identify the reasonable duty of care in different service stages. Finally, legislation will become a tool to balance the development of generative artificial intelligence and copyright protection, and become the legal boundary of technological development rather than a shackle.

First of all, with regard to technology neutrality, rule makers must make it clear that technology neutrality is deeply bound with the obligation of reasonable care. Furthermore, technology neutrality is based on subject neutrality, and there is no absolute exemption [12]. In article 1197 of the civil code, if the Internet service provider knows or should know the occurrence of infringement and does not take necessary measures, it does not constitute subject neutrality and should bear joint and several liability. Therefore, if subject neutrality is not established, the principle of technology neutrality cannot be applied [13]. The service object of the technology neutrality principle is the technology service provider [14]. Although the content service and process of the generative artificial intelligence service provider are special, it is also a technology service provider in essence. That is why the technology neutrality can also be used as a guide in discussing the determination of the reasonable duty of care of generative artificial intelligence [6]. Rule makers should take technology neutrality as the core to identify the obligation of reasonable care, and at the same time, refer to Article 1195 of the Civil Code to apply the "Notification deletion" rule to identify the application boundary of the principle of technology neutrality [13].

At the same time, the generative artificial intelligence service provider is essentially a network service provider. As a specific system of the technology neutrality principle in the field of network tort liability, it should also further explore the application of the generative artificial intelligence service provider's safe harbor principle. In combination with articles 21 and 22 of The Digital Copyright Act and China's regulations on the protection of the right to information network dissemination and relevant judicial interpretations, Generative artificial intelligence service providers can refer to the safe harbor rules of information storage space services [15]. On this basis, generative artificial intelligence service providers must maintain the neutrality of original content storage, cannot use the original expression of others as the purpose, respect the original author's communication management and control, and fulfill the obligation of synchronous disposal [16].

Combined with the above analysis, the service structure of generative artificial intelligence includes three stages: model algorithm and data governance, content generation and interactive services, platform operation and communication management. In order to avoid generalizations, it should identify different levels according to the different characteristics of different service stages, refine the content of reasonable duty of care in different stages according to the characteristics of service structure, and dynamically adjust the duty of care of generative artificial intelligence service providers [1].

First, in the model algorithm and data processing stage, generative artificial intelligence builds the underlying algorithm model of content generation by learning, parsing, and feature extraction of a large amount of data. Moreover, from the perspective of encouraging technology development, generative artificial intelligence service providers should undertake a relatively loose duty of care at this stage. Specifically, the principle of technology neutrality should be taken as the dominant principle, and the major goal is to encourage creation and promote the development of science and technology. Specifically, it should first take the principle of technology neutrality as the core principle, and take encouraging innovation and promoting the development of science and technology as the major goal. Secondly, the reasonable duty of care of generative artificial

DOI: 10.54254/2753-7048/2026.33847

intelligence service providers should directly apply the "notice delete" rule to avoid giving generative artificial intelligence service providers too much duty of care, resulting in too much pressure on them and restricting the development of the artificial intelligence industry. Furthermore, at this stage, in order to avoid the proliferation of infringement, it should appropriately strengthen the "red flag principle," whose purpose is to let the generative artificial intelligence service providers take the initiative to undertake the obligation of proactive review in advance. Specifically, the generative artificial intelligence service provider should predict in advance the prohibited words or instructions that may trigger infringement when users use them at this stage, and design relevant databases. If users involve such words at the content generation interaction stage, the platform will immediately issue pop-up prompts to avoid infringement in time [6].

In the stage of content generation and interaction, the generative artificial intelligence service provider should assume the obligation of a supervisor. When users register to use generative artificial intelligence services, they should be reminded of the risk of copyright infringement in time; When users interact with generative artificial intelligence, they should be given necessary prompts to reduce or even avoid the risk of copyright infringement. Meanwhile, if users have induced use behavior, the platform will immediately block, timely warn, and stop offering services to users when necessary to avoid infringement.

In the stage of platform operation and communication management, generative artificial intelligence service providers should take on the strictest duty of care. Specifically, service providers need to take the initiative to improve the "notice-delete" rule and set up a convenient infringement complaint channel to improve the efficiency of infringement handling before infringement occur. At the same time, according to the experience of practical management of the platform and the feedback of infringement complaints, the database of prohibited words set up in the model algorithm and data processing stage is updated in a timely manner. If copyright disputes arise, generative artificial intelligence service providers should be encouraged to solve infringement disputes with copyright owners through artificial intelligence and transparent negotiation, so as to improve the resolution efficiency and increase social credibility. After the dispute is resolved, service providers should pay attention to the prevention of secondary infringement. In view of the repeated infringement problems, generative artificial intelligence service providers need to build a systematic identification and response system in the technical architecture and operation mechanism, focusing on identifying the behavior patterns that use specific functions or vulnerabilities to implement the same type of infringement, so as to realize the transformation from passive to active prevention and control [17].

5. Conclusion

The continuous development of generative artificial intelligence technology is the only way to comply with the historical trend and the development requirements of the times. let the law become the shackle of technological development instead of letting technological development put on the cloak of infringement anomie. As a special network service provider, generative artificial intelligence service providers should not simply apply the traditional liability structure of network service providers. They should combine the particularity of their legal status and dynamically identify their reasonable duty of care by hierarchical regulation without hindering the development of technology, so that the law can escort the development of technology.

DOI: 10.54254/2753-7048/2026.33847

References

[1] Wang, S.T. and Yang, L.H. (2026) Stratified Regulation and Three-Dimensional Response to Copyright Infringement by Generative Artificial Intelligence Service Providers. Editorial Friend, 2, 86-96.
[2] Interim Measures for the Management of Generative Artificial Intelligence Services (2023) Articles 9, 22.
[3] Xiong, Q. (2025) Copyright Infringement Liability of Generative Artificial Intelligence Platforms. Global Law Review, 47, 23-37.
[4] Sun, Q. (2023) Research on Legal Issues of Governing the Providers of Generative Artificial Intelligence Products. Political Science and Law, 7, 162-176.
[5] Xu, W. (2023) On the Legal Status and Liability of Generative Artificial Intelligence Service Providers--Taking ChatGPT as an Example. Science of Law: Journal of Northwest University of Political Science and Law, 41, 69-80.
[6] Huo, X.Y. and Feng, Y.Y. (2025) Study on the Improvement of the Duty of Care for Providers of Generative Artificial Intelligence Services in China. China-Arab States Science and Technology Forum, 11, 168-172.
[7] Gao, Y. (2024) Justification of the Content Review Duty of Care for General Artificial Intelligence Providers. Oriental Law, 1, 189-200.
[8] Regulation on the Protection of the Right of Communication through Information Networks.
[9] Ma, J.J. and Yu, Y.M. (2007) General Theory of Civil Law. 3rd Edition, Law Press, 1010.
[10] EU Artificial Intelligence Act 10
[11] Digital Millennium Copyright Act 11
[12] Ding, X.D. (2025) Reconstructing 'Knowledge': Reflection on the Indirect Infringement Liability of Platforms. Oriental Law, 1, 75-89.
[13] Civil Code of the People's Republic of China (2020) Article 1197.
[14] Wu, H.D. and Fan, S.E. (2025) On the Reasonable Duty of Care of Generative Artificial Intelligence Service Providers. Intellectual Property, 11, 3-23.
[15] Regulation on the Protection of the Right of Communication through Information Networks (2013) Articles 21, 22.
[16] Civil Judgment, Hangzhou Internet Court (2024) Zhe 0192 Min Chu No. 1587.
[17] Geng, R. (2026, January 29) On the Duty of Care of Generative Artificial Intelligence Service Providers. Henan Youth Times, A14.