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Statutory Copyright Status of AI-Generated Content

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Abstract. Generative artificial intelligence (AIGC) can now generate text as well as make pictures, music, and all kinds of expressions by itself. So, the problem about how to set up copyright for AIGC produced work becomes an important issue in legal field and actual work field. The traditional copyright law is based on the idea of human creation. But, in fact, it's not created directly by man. It poses major issues on copyright law as to whether these can be considered works of copyright law, who the author is, who has ownership over it, and how one would determine infringement liability. The copyright legal situation of AIGC is studied from the angle of work identity, authorship and owner identification as well as violation liability determination. Based on related parts of China's Copyright Law, it takes reference from the domestic and overseas studies as well as judgments to look for solutions under current laws and gives practical advice with Chinese characteristics. It can provide a theoretical basis to improve the copyright protection methods and promote the healthy development of artificial intelligence industry.

Keywords: AI-generated content, originality, copyright attribution

1. Introduction

With the coming of the 21st century, Artificial Intelligence made great progress and went from weak AI to strong AI. Generative AI has started shaking up people's views on what it takes to be creative. These days, AI made stuff is everywhere: news stories, books, art designs, university papers too. The traditional copyright law always puts stress on "the human intellectual achievements", it states works are a product from people's creative activities. But the generation of AIGC is different from ordinary artificial intelligence. It's when AI creates content by themselves with the help of algorithm and data and in some case it might even be more than what developers expected from a system [1]. The "non-human creation" nature of AIGC makes current copyright provisions unapplicable, it is urgent to ask whether there can be any "AIGC work" ? Is that true? Who would be the author then: AI, developer, you, or something else? How to deal with copyright authorship and rights? Who should bear the responsibility for AIGC infringements?

2. Analysis of the workability of AI-generated content

Works, means if something is considered a "work" by copyright laws, it defines what kind of thing AIGC can be. Originality is the essential part in a work, determining what is and isn't a work for

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AIGC. In this section, we look at what "originality" means through analyzing different classifications of AIGC, and argue that it can be considered a work.

2.1. Controversy over the classification of AI-generated content

As for now, legal professionals hold three opinions towards how to classify AIGC, that is, it is "not work", "work" and the intermediate view. Every opinion has its rationality and limitations based on their theoretical foundation.

Non-Work Theory: Non-work theory believes that AIGC cannot be regarded as work under copyright law because it cannot satisfy the basic condition -"human creation". Those supporting non-work theory believe that the legislative purpose of copyright laws is to protect human intellectual achievements and promote creativity. But AIGC does not have the intellectual labor of humans, which comes from algorithmic intelligence as well as data. It is hence called "machine output" and not human creative work. As for AI itself there's no legal subject status so it can't hold the copyright [2], therefore what it creates shouldn't be seen as a work.

Work theory claims that AIGC is a work according to copyright law mainly because it satisfies basic conditions required by works. It says it should be protected by originality and doesn't need a human to create. Though created via AIGC technology, some AIGC contents still show different expressions which distinguish themselves from other materials so they also have"originality" [3].

The "middle view" is in the middle of the two. The argument goes that whether AIGC works is not decided simply because it has certain production means or characteristics. Different kinds of AIGC use different ways to generate things, have people take part in making them differently during generation, and are more or less original. AIGC that has high degree of human participation and the produced contents have considerable originality can be identified as works. On the other hand, AIGC where minimal humans created something which is not genuine should also no be considered as a work [4].

The author thinks that the middle way is better. Considering the various ways in which the AIGC is generated and varying levels of human participation and creativity among them, it would not be appropriate to simply say whether it constitutes a work. To decide if AIGC is considered work or not, we need to get back to basics about copyright laws. We must look at whether AIGC has originality or not and see how much humans were involved with creating AIGC and what kind of things they created – which will mainly be the topic discussed here.

2.2. Assessing the "originality" of AI-generated content

"originality" is a basic condition of the work which falls within copyright. Originality is even more difficult to evaluate for AIGC: "creating independently" and "whether it can be called 'A's creation'?"

Firstly we need to make clear what it means for an AIGC work to have originality, which is identical to how we define human work, independent creation and being unique. This standard does not get higher or lower because of the specialness of the author. Copyright law places emphasis not on "idea," but rather "expression". If the expression of AIGC has been generated independently and also differs from existing works then it would be considered as being original [5]. Second is distinguishing between AI's 'self generation' and the human directed generation. AI lacks will and creative thought. Output from AIGC is the result of algorithms working on data and both are created by us. The "originality" of AIGC is the result of people's intelligence work – it was indirectly created by setting algorithms, picking datasets, defining creativity goals, etc. In the end, things like ideas,

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methods, and facts, which aren't covered by copyright law, should be ruled out too, making the scope of AIGC's "expression" pretty clear. Copyright Law only protects expressions of ideas and not the idea itself. Not protection for methods, facts or formulas. AIGC, for generated content being just simple facts and methods, repeating what exists but in a slightly different wording doesn't qualify as original.

In conclusion, to determine if AIGC can be protected cannot be generalized. It comes down to whether there was "originality", thus AIGC which is human directed and unique forms of expression should fall within the purview of copyright law. On the contrary, it is not a work if AIGC created independently by AI without any originality. It is consistent with the legislative intention of Copyright Law and takes into account the current level of AI technological development, which offers some grounds for the copyright protection of AIGC.

3. Authorship and copyright attribution for AI-generated content

According to the traditional definition, Author means a natural person who actually creates any work and normally holds the copyright in that work. In other cases it could be a legal person or unincorporated body. But the producing entity of AIGC is artificial intelligence, and it doesn't have legal personality, so it can't be the subject of copyright. So we need to figure out who is the author of AIGC, and whose copyright it belongs to.

3.1. The concept of "author" in traditional copyright law and its challenges

In traditional copyright law, what constitutes an "author" is basically an "entity that creates a work," and such an entity has to have personality; they can be natural persons, legal persons or unincorporated associations. Of which, the most basic author is natural person; legal person or unincorporated organization could only be regarded as an author in some circumstances.

The advent of AIGC brings great trouble to the traditional "author" idea in copyright laws. From another perspective, the producer of AIGC is artificial intelligence, it does not have the capacity for legal personality: natural person, corporate or unincorporated organization; therefore it cannot be considered as a "Author". On the contrary, the process of AIGC creation includes many people such as AI creators, users and providers who are involved in making something. However, there is no clear provision of law at present on how one should recognize the "author" [6].

To solve for these problems we need to interpret and redefine what author means. Considering the nature of AIGC, we should establish criteria for deciding on authorship. The author holds the opinion that as for AIGC's "author", it is not the AI who makes contributions, but the person actually doing something to contribute. It's because the originality of AIGC is actually people's intellectual work and only people are subject to copyrights.

3.2. Analysis of key stakeholders and their positions

AIGC creation is a matter related to various parties like AIGC creators, user party and the party providing information/data that may affect the public. Stakeholders put forward various claims about AIGC copyright ownership in accordance with their own interests; they all have some reason, but also limited.

First, the people who make AIs say its theirs. Developers are creators and constructors of algorithms, giving the foundational technical aid for an AIGC creation via the development of algorithms, optimization models, providing core data, etc [7]. They say it's because AIGC depends

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on their algorithm and system development; without them, there would be no AIGC. Therefore copyrights should be with the developers.

Two, AI people say that it is their copyright. It is the people who utilize and run AIGC by giving it directions, choosing creative topics, adjusting the parameters if necessary; then they filter the results. Users feel like the AIGC content was made how they want it, showing off their own choices and thinking. So, they say it is theirs. Thus, AIGC copyright belongs to them.

Three, data provide side should own some copyrights or be given proper remuneration. Training data from data providers goes into the AI system, which acts as the basic building block for the generated AIGC content.

No good training material, no original content for AI. The data provider argues that the data they provide has its own value, which can produce AIGC and should have some copyright or compensation.

And finally considering the interest of the public means that some AIGC belongs to the people. Some say there's some AIGC that generates itself without big help from people, or has things everyone can use. It will also limit public accessibility to such content, preventing knowledge from being freely spread and shared. Therefore, this sort of AIGC ought to remain within the public domain and be available for free public use.

The author states that copyright attribution in AIGC is about the level of human participation and effort made, it needs to differentiate these situations so as to accommodate every party: developers, users, people who supply data, and everyone's best interests. Put differently: There are 2 cases first case is man dominates AIGC when we actively engage in generating such things like deciding a goal, changing the variable, choosing and changing content then it will increase our output's authenticity If so, it will be the right of the user and developers will get fair money by agreement with users. And then there's AI-autonomous AIGC where people give just basic instructions, don't take part in the actual creation at all, and most of what gets produced depends on the creators' algorithms and systems. In the above example, copyright belongs to the developer and others can use it as much as they need. For data providers: if there is any originality in their provisioning of training data, then they ought to possess the right of copyright. If there's no originality, then give them some money.

styles

4. Determining liability for infringement in AI-generated content

With the general use of AIGC,AI plagiarism has become more common. AIGC might take others' legitimate rights and interests away, like other people's copyrights, faces, and good name. It is necessary to determine who should bear responsibility for AIGC infringement and distribute that responsibility now.

4.1. Infringement risks of AI-generated content

AIGC's infringement risk mainly comes from the fact that it is generated by an unusual method, and it shows up as three points. First is training data's infringement problems [8]. Training AI systems needs lots of texts, photos, music and more, sometimes it has stuff that others own the copyright for. When developers do not obtain authorization from such data copyrights holders and pay them fair amount as remuneration, it is a infringement of copy right.

Second is Content's own infringement. That refers to illegal copy which happens due to materials made off AI&GC And it shows in 2 major types: copying/stealing other people's work, which means

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what is written down here looks very similar to something that has already been written by someone else, so we break the rules there; making stuff that hurts others feelings, like saying mean things about them, which breaks those people's good name [9].

Thirdly there is risk of infringement because users might infringe other people's legal rights if they use AIGC. As shown below:To infringe on the commercial use of the AIGC generated content by others, but without permission from the Author. which is infringement. Users produce harmful online contents to insult someone else's private life.

4.2. Determining liability for AI-generated content infringement

As AI itself does not have legal personality and is unable to bear the responsibility for infringement, those who should bear liability for AIGC infringement are people making material contributions towards the creation and utilization of AIGC. The latter mainly consist of AI producers, users, etc. Responsible party determination, it should be allocated according to the type of infringement and the degree of responsibility of those who are responsible for the infringement.

First,it's the developer's mistake. Developers has his algorithm and makes it all; he is a big player making AIGC. And mostly it's based off the training Data which makes the: And developers need the permission of the owner of training data and remuneration, otherwise, if they bear responsibility for copyright infringement with AIGC content by other people, it will be primary liability. If we make some mistake while creating algorithmic development then it could be possible that AI produce contents which violate law or regulation of anyone's rights like being infringer by others [10].

Second is that of Users. As the real producers and consumers of AIGC, it is mainly manifested in their own use and screening of the produced content. When the user explicitly instructs A.I to plagiarize other's work when generating; Or, the user did not review the infringing work that was generated and then used and spread; In these cases the user should mainly bear the responsibility of infringement. During the time that the user used a AICG to use any of the infringed content mentioned above for commercial purposes, then such users should still bear responsibility and liability of infringement.

Third, liability of the data supplier. Data supplier was supplying training datasets to algorithm their responsibility lies more on if the stuff that it supplies is copyrighted or not. Data suppliers supplying training data with other people's owned copyright work in it without getting the permission from the copyright holder and cause the output of AIGC infringements to others' copyrights. They shall bear the corresponding liability for infringement. A data supplier who gives out the same kind of date which has already been violated for development by developers, is also responsible [11].

At last, how to apportion blame: When there are more than two liable persons for AIGC infringement, it should bear joint liability or liability in proportion to the degree of fault and contribution. Assume he is using the unlicensed info for the training, or asking an AI to duplicate someone else's efforts. It doesn't matter who did what, both parties are wrong. However when developers use the stolen data and people circulate material without checking it out, different amount of guilt should be assigned for that.

4.3. Exceptions to AI-generated content infringement

Under some circumstances, if people create or apply AIGC works that infringe on other people's legal rights and interests, it is still legal because they comply with the legally specified exceptions. It

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is an important part that decides AIGC infringement liability [12]. According to Article 17 of China's Copyright Law, there are mainly three scenarios for AIGC infringement.

First Fair Use. For AIGC, If the produced material was used by someone like me to do personal studies, research, commentary, news reports, and also made use of other people's work for training or producing materials themselves; then according to Fair Use it is not considered infringement. Second Statutory Licensing. For AI genesis creator develops using other's publication to create training material if which is statutory licensed, then should give reasonable compensation then its not infringing work. Third is copyright protection expiring. If the copyright protection period for someone else's work has expired, and the work is in the public domain, then AIGC can train on that work or generate content from it without violating any copyright laws [13].

5. Conclusion

Copyright protection of AI produced material is a new type of problem brought on by the development of AI, it's an important challenge to copyright law. In this paper I integrate these issues into the current provisions in Chinese Copyright Law together with domestic & foreign theories and judicial practice to make my conclusions. To start, determine if there is any originality present based on "how creative AIGC was", taking a "middle path" to domination by man over artificial intelligence; Second, it's not that the author of AIGC is the AI; instead, they are people who do something substantial for its creation. Thirdly, it is individuals like developers, users, data providers who bear the blame for infringement by AIGC, which depends on what sort of infringement and how much at fault. At the same time, excepting AIGC infringement,fair use,statutory license, copyright expiration should be clarified as well as strictly implemented in order to stop infringing activities.

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