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Research on the Criminal Law Protection of Copyright for Artificial Intelligence Creations

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Abstract. The rapid development of generative artificial intelligence (AI) has led to the widespread production and commercial use of AI-generated content (AIGC), raising new questions concerning copyrightability, rights ownership, and criminal regulation of infringement. From the perspective of coordination between civil and criminal law, this article examines the copyrightability and ownership of AIGC and the corresponding boundaries of criminal-law protection. It argues that the involvement of AI should not, by itself, exclude generated content from copyright protection. The decisive inquiry should be whether a human user has made sufficient creative contributions through prompt design, selection, modification, and refinement of outputs. Where such contributions satisfy the requirements of copyright law, the user may in principle enjoy copyright in the resulting work. Criminal-law protection should then be premised on rights recognized under copyright law and constrained by the principles of legality and restraint. AIGC-related infringement can be divided into two principal categories: infringement of copyrightable AIGC and infringement of pre-existing works through generative AI. For the latter, model training and user-side use should be distinguished, and unauthorized input should not automatically establish infringement at the output stage. Criminal liability should depend on whether protected expression is substantially reproduced and whether the statutory act, quantitative threshold, and subjective intent required by Article 217 of the Criminal Law are satisfied.

Keywords: artificial intelligence, copyright, crime of copyright infringement, civil-criminal coordination

1. Introduction

1.1. The commercial application of AIGC and the requirements for legal regulation

In recent years, generative artificial intelligence such as ChatGPT, Stable Diffusion, Doubao, and DeepSeek has developed rapidly. The output of AI-generated content has exploded, posing challenges to the current legal system and urgently requiring legal regulation. Some artificial intelligence-generated products have been commercially utilized and have led to related infringement disputes. The core controversy mainly lies in whether they can be regarded as works within the scope of copyright law and their ownership. The legal attributes of artificial intelligence-

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generated products are questionable and the ambiguous judgment criteria for their copyrightability have made it difficult to resolve related disputes in judicial practice. As artificial intelligence continues to develop and the commercial utilization of artificial intelligence-generated products expands, its impact on the socialist market economy cannot be ignored. Not only is it necessary to study how to regulate them in the civil law domain, but also it is necessary to explore the regulatory paths in the criminal law domain.

1.2. The main controversy regarding copyright protection of AIGC

1.2.1. The controversy over the nature of AIGC's works

At present, in the field of copyright, the academic community mainly holds two viewpoints regarding whether AIGC can be regarded as a work within the scope of copyright law. The negative view holds that the expressive elements of AIGC are not determined by human free will and are not formed through human creative actions. Therefore, they do not fall under the category of expression as defined by copyright law, and it makes no sense to discuss their originality [1]. There are also viewpoints that adhere to the author-centered principle, arguing that only human creations can be protected by copyright [2]. The affirmative view holds that AIGC has the potential to become a work. A specific judgment should be made based on whether AI technology provides a creative space for natural persons and the intellectual input of natural persons. If the user makes identifiable creative contributions to a specific output through means such as controlled linear modification, the resulting outcome may meet the requirements of a work. This article holds a positive stance on conditions and does not necessarily deny the nature of the work simply because of the use of AI tools. Instead, it makes individual case judgments based on the creative contributions of humans.

1.2.2. The copyright ownership dispute of AIGC

At present, there are mainly the following several viewpoints regarding the copyright ownership of AIGC. First, the "artificial intelligence as the author" theory holds that the copyright of AIGC can belong to the artificial intelligence, and the artificial intelligence can thereby become the "author" of the work. European-related documents have previously proposed the idea of granting "electronic person" legal status to complex automated robots, [3] However, this is more of a conception regarding the legal status of robots in the era of strong artificial intelligence in the future. At present, weak artificial intelligence still cannot independently exercise rights or fulfill obligations. Granting them copyright directly not only lacks a realistic basis but also fails to achieve the institutional goals of copyright law, such as stimulating creativity and promoting public interests. Secondly, the developer stated that the primary consideration is the fundamental technical contributions of the model developers to generative artificial intelligence. However, the specific generated content is often initiated by other entities. The developers do not necessarily determine the expression of each output content, and their investment can usually be rewarded through market mechanisms such as model products, technology licensing, and service fees, This concept of ownership rights is not conducive to motivating the use of this new technology - generative artificial intelligence - for creation. It may also lead developers to focus more on litigation activities and engage in "copyright enclosure" that results in industry monopolies. Thirdly, the investors stated that the emphasis on the significant initial investment required for model development is similar to the reasoning given by the developers. However, merely the investment amount is not sufficient to prove that the specific generated content has been created through copyright-law-defined creative work. The user stated

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that if the user inputs instructions and makes linear modifications to the output, and if these actions constitute sufficient creative contributions, and the final outcome meets the requirements for originality, then the copyright can belong to the user. This also helps to encourage the public to use new tools for creation.

Fifth, other institutional arrangements, including the inclusion of some AIGC projects in the public domain, [4] or adopting the orphan works system for specialized management [5]. Such solutions are convenient for handling AIGC that no one has the right to. However, if the user has already made identifiable creative efforts on the specific outcome, uniformly excluding their authorship status might lead to insufficient protection. This article holds that the ownership of AIGC should not be determined solely based on factors such as model development and capital investment, but rather should take into account the creative contributions of human subjects during the specific generation process. For the generated results where the users have made sufficient creative contributions, in principle, they should be entitled to the corresponding copyright.

1.2.3. Domestic and international judicial practices and regulatory trends

At present, the court decisions in our country vary. Some courts have ruled that, when there is sufficient human creative input, the content generated by artificial intelligence can constitute a work, and natural persons or legal entities can own the copyright to it; [6] there are also cases where courts have denied the artistic nature of a work due to insufficient human creative input [7]. Judicial practice usually adopts a case-by-case review approach. Human individualized choices, prompt word design, the degree of control over the generation process and results, etc. have gradually become important judgment factors. Some studies have also summarized the trend of a shift from "direct control" to "limited control" or "indirect control" evaluation [8]. Italy recognizes the copyrightability of works created by authors with the assistance of artificial intelligence, while Japan believes that the "specific, detailed, and identifiable individualized control" by the user in the final expression is crucial. Korea only protects copyrights for works that possess elements of "human creation" [9]. The US Copyright Office has shown a new trend in its attitude towards AIGC's copyrightability. In the "The Latest Crossroads to Heaven" case, the US Copyright Office refused to register the copyright of "The Latest Crossroads to Heaven", arguing that the identity of the human author is the prerequisite for copyright [10]. However, it did not directly rule out the possibility of AIGC becoming a part of the work; instead, it merely set requirements for the extent of human involvement, [5] the US Copyright Office has permitted the registration of works created by individuals using artificial intelligence, [11] from the decision in 2023 to reject the registration of all AIGC works, to the recognition of the copyrightability of AIGC under certain conditions in 2025, [12] This reflects the recognition and emphasis on the intellectual input of humans when they use this new tool, AI, in the creative process. Therefore, based on domestic and international practices, the key to determining the copyrightability of AIGC should lie in whether humans have made sufficient creative contributions to the final expression, rather than whether generative artificial intelligence was used.

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2. The premises and challenges of copyright criminal law protection under the AIGC framework

2.1. The normative prerequisite for AIGC to be subject to copyright criminal law protection

2.1.1. The copyright law states: the prerequisite for criminal law protection

In the field of intellectual property crimes, the relationship between criminal law and copyright law mainly involves two viewpoints: the "independent theory" and the "dependent theory" [13]. This article holds that when the criminal law protects AIGC, the relevant concepts should be consistent with those in the copyright law. The definition of the protection scope should be based on the copyright law, and the principle of criminal law's restraint should be adhered to. As the protection law for copyright, the criminal law needs to be premised on the authorization granted by the copyright law when protecting AIGC [14]. Therefore, for AIGC to fall within the scope of criminal law protection, it must first meet the basic requirements of the Copyright Law regarding works, including being in the fields of literature, art, and science, having originality and being capable of being expressed in a certain form; at the same time, based on the principle of legality of crimes and the prudence of criminal law, the actual protection scope of criminal law can be further narrowed on the basis of the Copyright Law. The "Notice of the State Council on Issuing the New Generation Artificial Intelligence Development Plan" clearly states that research on civil and criminal laws related to the application of artificial intelligence should be carried out [15]. Compared with the theories of derivative rights, protection under anti-unfair competition law, and neighboring rights, the copyright law can more directly link issues related to work identification, rights attribution, and infringement liability. Therefore, it remains the main institutional framework for discussing legal protection of AIGC [3]. Based on this, whether the criminal law should intervene and to what extent, should be determined based on the rights confirmed by the prior law, and further judged in light of the protection purposes of the criminal law itself.

2.1.2. AIGC work attribute: judgment of human creative contribution

In the context of human-machine collaboration and weak artificial intelligence, generative artificial intelligence essentially does not have the intention to actively create, nor does it have the ability to "think" like humans. The algorithms it runs and the range of materials it uses for creation are all initially set by humans. AIGC is actually the result of the intellectual input of developers, users, data input from the source, etc., intertwined and integrated to varying degrees. Generative artificial intelligence is essentially a new type of technical tool. One should not simply attribute the role of creator to artificial intelligence based on its use in the creative process, and then directly deny the copyrightability of AIGC due to an inappropriate subject. It is advisable to comprehensively consider the patterns of returns for developers and investors in common practice and the division of interests between them and users, the creative space for users to create specific works using generative artificial intelligence, whether they make linear modifications, the intellectual and labor input, and whether the final outcome can be included in the protection scope of copyright law. This will enable an evaluation of the copyrightability of AIGC and the determination of the copyright ownership of eligible works.

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2.1.3. Intrusion of criminal law: necessity and limits

Using artificial intelligence to generate content is fast, convenient and cost-effective. As AIGC enters the commercial market, if protection is not given to the generated results that require considerable human intelligence input, it may lead to gaps in rights protection and affect fair competition. Granting copyright protection to AIGC that meets the requirements of a work is helpful in encouraging users to legally utilize the new tool for creation. However, the criminal law does not intervene simply because AIGC has commercial value. Only when the relevant infringement simultaneously meets the behavioral type, subjective requirements and legal quantitative standards stipulated in Article 217 of the Criminal Law, can it have criminal punitive effect. Therefore, this article advocates providing copyright protection for AIGC that meets the conditions, and insists on limiting the intervention in the criminal domain.

2.2. The practical challenges in protecting copyright under the AIGC criminal law

With the large-scale commercialization of AIGC, related infringements may cause significant losses and affect market order. However, the criminal regulation of AIGC still faces several difficulties. Firstly, the standards for judging the copyrightability and originality of AIGC are not yet fully unified, and the pre-existing legal evaluation is unstable, which poses a problem of "what to protect" for criminal law; secondly, the positions of model developers, service providers, and users in terms of value contribution and risk control are different, and the entities enjoying the rights of AIGC and those who can control the related risks may be separated, increasing the difficulty in identifying the responsible parties; finally, the algorithm black box and the uncertainty of the generated results make it more difficult for the perpetrator to understand the specific infringement facts and determine their subjective intent [3].

3. The criminal law protection path for artificial intelligence-generated products

3.1. The limitation of the scope of criminal law protection under the integration of civil and criminal law procedures

The Criminal Law Amendment (XI) has listed "copying and distributing" and "public dissemination through information networks" on an equal footing. This has reduced the conflict in the civil and criminal concepts that previously resulted from including online dissemination within the scope of "copying and distributing", reflecting the legislative trend of connecting criminal protection of copyright with the prior laws [16]. In the field of copyright crimes, the legal interests protected by civil law and criminal law are consistent. Maintaining the connection between civil law and criminal law is conducive to preserving the suggestive function of legal provisions, maintaining the uniformity of the legal order, and constructing a "civil and criminal co-governance" governance model [16]. The criminal regulation of AIGC should also be based on the works and rights confirmed by the copyright law to maintain the uniformity of the legal order; however, this connection does not mean that criminal law will completely replicate the protection scope of the copyright law. The copyright law mainly focuses on confirming rights and allocating interests, and provides relatively comprehensive remedies for civil infringements; while the criminal law, as a public law, needs to define the boundaries of the state's criminal jurisdiction, [17] the criminal law only intervenes when civil and administrative measures are insufficient to address serious infringements of legal rights, and when the act meets the requirements of the crime's composition

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and the prescribed quantitative standards [13]. Therefore, even if AIGC has the attribute of a work in civil terms, it does not automatically become a protected object under the copyright infringement crime. The criminal law should still reasonably limit its scope based on the principles of legality of crimes, restraint, and social harm degree.

3.2. The typification of copyright infringement related to AIGC

3.2.1. Infringement of AI-generated content with the attributes of a work

After AIGC has its copyright confirmed and the rights holder is determined, its legitimate rights and interests can be protected by both the Copyright Law and the Criminal Law. If others use AIGC without permission, they may first constitute civil infringement. Only when the act is for profit, falls under the types of acts stipulated in Article 217 of the Criminal Law, and meets the legal standards such as a large amount of illegal gains or other serious circumstances, will it enter the realm of criminal responsibility evaluation. Some scholars argue that since AIGC does not carry out the same copyright personal interests as those of natural person's works, the intensity of its criminal law protection should be lower than that for natural person's creations [18]. This viewpoint has certain rationality from the perspectives of proportionality between crime and punishment and the restraint of criminal law. However, if it is already acknowledged that certain AIGCs possess the attributes of works and that natural persons enjoy corresponding copyright property rights, and if a separate and lower set of criminal composition standards is set up independently, it will increase the complexity of judicial application. Therefore, this article believes that for AIGCs that have reached the threshold for criminal protection, the Criminal Law Article 217 should still be uniformly applied, and it is not necessary to set up a separate criminal composition standard solely based on their different generation methods. Of course, "uniform application" does not mean completely ignoring the particularity of AIGCs. The degree of human creative contribution, the content of rights, and the specific degree of harm to legal interests can still be considered in whether it reaches the level of criminal punishment, the severity of the circumstances, and the sentencing evaluation, in order to achieve a balance between protecting interests and the restraint of criminal law.

3.2.2. Using generative artificial intelligence to infringe upon existing works

When generative artificial intelligence is used as an infringement tool or AIGC results in infringement, it is necessary to distinguish between the model training end and the user usage end. During the model development and provision stage, the main issues involve the legality of obtaining, copying, and using training data; during the ordinary user usage stage, the main issues involve their own uploading, feeding of protected works, and subsequent replication, dissemination, and commercial utilization of the generated content. The current copyright law of our country has not specifically set up independent fair use rules for the training of generative artificial intelligence, and it is inappropriate to automatically consider unauthorized commercial training as fair use [19]. At the same time, it cannot be assumed that the model's output will necessarily constitute infringement just because there are copyrighted works in the training data. The presence of unauthorized use at the input end does not mean that the final output is definitely infringing; the output end still needs to determine whether the generated content substantially reproduces the protected expressions of the prior work. For users, it is also necessary to distinguish between merely inputting general prompts and directly uploading specific works, requiring the model to rewrite or transform them, etc. For the latter case, it should be judged based on the input materials, instruction

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content, output results, and their subsequent dissemination and utilization whether it constitutes infringement of the reproduction rights, adaptation rights, or information network dissemination rights of the original work.

3.3. The specific determination of the crime of copyright infringement in the AIGC scenario

3.3.1. Protected legal interests: Literary and artistic property rights and copyright order

The protected legal interest of the crime of infringing upon copyright cannot merely be understood as an abstract market order, nor can it be limited solely to individual private rights. The "private rights theory" can explain that copyright crimes primarily harm the interests of specific rights holders, but it is difficult to fully explain the position of this crime within the system of crimes that undermine the socialist market economy order, and overly emphasizing the protection of private rights may not be conducive to technological innovation.; the "order theory" alone may weaken the institutional basis of copyright as a private right, and may lead to an exacerbation of the "digital divide"; article 217 of the Criminal Law centers on elements such as "without the permission of the copyright owner" and "for profit purposes", indicating that the property interests of the copyright owner are an important protected content of this crime, at the same time, serious and large-scale infringement acts will also damage the copyright management and the market competition order of culture, therefore, this crime should be understood as having dual legal interests, namely the individual property interests of the copyright owner and the copyright order [20]. The criminal law protection for AIGC should also emphasize the infringement of substantive legal interests: The mere existence of general copyright infringement is only one of the prerequisites for criminal law evaluation. Only when the degree of infringement reaches the level that is criminally punishable and meets the other constitutive requirements of Article 217, should criminal penalties be imposed.

3.3.2. Objective aspect: Scenario-based determination of statutory act types

Infringing upon the protected AIGC copyright or using generative artificial intelligence to infringe upon others' works still needs to fall within the legal behavior types stipulated in Article 217 of the Criminal Law. The current "Interpretation of Several Issues Concerning the Application of Law in Criminal Cases Involving Intellectual Property Rights Infringement" (Judicial Interpretation [2025] No. 5) has clearly defined "copying and distributing" as either copying and distributing or distributing for the purpose of distribution. Therefore, it is not appropriate to include simple copying and simple distribution in this concept altogether. In cases where infringement occurs through generative artificial intelligence, through the use of artificial intelligence to generate "new" results that differ in language expression and structure from existing works but essentially imitate the original works, such "plagiarism" behavior, if it reaches the level of "copying", should be subject to criminal law regulation; however, using AI for "plagiarism" may be more covert and cannot be directly classified as "copying". If the purpose of the act is for dissemination and profit and the infringing work completely imitates the original work to reflect the originality, this behavior can be regulated through an expanded interpretation of "distribution" [21]. When infringing-generated content is disseminated to the public through the network, the legal act type of "dissemination to the public through an information network" should be given priority application. If the relevant behavior does not fall within the specified behavior patterns of Article 217, even if it may constitute infringement in civil terms, it is not advisable to forcibly charge it with the crime by resorting to an

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expansive interpretation. For cases where the protected AIGC itself is infringed upon, the principle of applying the same act type judgment rule should generally be followed.

3.3.3. Subjective aspect: determining intent through control and foreseeability

When infringing upon the protected AIGC copyright, the subjective intent of the perpetrator can generally be judged according to the standards of the general copyright infringement crime. When generative artificial intelligence is used as an infringement tool or when AIGC leads to infringement consequences, it should be evaluated separately based on the understanding and control capabilities of different entities regarding risks. Model developers and service providers, although having strong control over training data and system operation, violating data compliance and content review obligations under civil or administrative laws does not necessarily mean they have the intent to commit the crime of infringing copyright; their criminal responsibility still needs to be judged based on their understanding of the specific risk of infringement, whether they can control such risks, and whether they actually carried out or participated in the acts stipulated in Article 217 of the Criminal Law. For ordinary users, it is also inappropriate to require them to review the entire data source of the model's training. Otherwise, it would impose on them obligations that are disproportionate to their actual control capabilities. To determine whether the user has intent, one should focus on examining the facts such as the user's instructions for providing prompts, the materials actively uploaded by the user, the user's screening and modification of the generated results, whether the infringement features are obvious, and whether the user proceeds to copy and disseminate for profit purposes subsequently. If the instructions directly require the imitation of a specific work, character or expression, this can be regarded as an important basis for determining direct intent; when there is no clear infringement instruction, factors such as the professionalism of the generated content, the popularity of the original work, the degree of similarity, and the subsequent handling of the actor can be combined to determine whether the actor knew and tolerated the risk of infringement [22]. For the inherent risks of the model that the actor objectively cannot recognize or control, it is necessary to avoid inferring criminal intent based solely on the final outcome constituting infringement, in order to prevent the introduction of liability for consequences into the crime of copyright infringement.

4. Conclusion

With the development of artificial intelligence technology, human-machine collaboration will continue to deepen. The attributes of AIGC works, the rights ownership, and the liability for infringement have become issues that both copyright law and criminal law need to address. This article holds that for AIGC, a "one-size-fits-all" or "all-excluded" approach should not be adopted. Whether to grant copyright protection should be based on whether humans have made sufficient creative contributions to the final expression; for the generated results that meet the requirements of a work, the copyright can be claimed by the user who made the main creative contribution to the corresponding expression. On this basis, criminal law protection should be based on the rights confirmed by the prior law and further restricted based on the principle of legality and restraint. For different scenarios where AIGC is the victim, as well as where generative artificial intelligence is the tool for infringement and where AIGC is the result of infringement, the legal behavior types, the degree of harm to the legal interests, and the intent of the perpetrator should be separately examined. Special attention should be paid to distinguishing the risk control capabilities of the model training end and the ordinary user usage end. Only when the behavior falls within the scope of Article 217 of

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the Criminal Law and meets the legal quantitative requirements, criminal responsibility should be pursued. It is necessary to avoid directly criminalizing general civil infringement or mere compliance obligations violations.

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