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Standards for Copyrightability of AI-Generated Content (AIGC): Theoretical and Practical Perspectives

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Abstract

The explosive development of generative artificial intelligence technologies, exemplified by ChatGPT, has fundamentally challenged traditional *Copyright Law* by introducing new models of human-machine collaborative creation, making the copyrightability of AI-generated content (AIGC) a cutting-edge issue in contemporary judicial practice and academic studies. This technological wave has directly given rise to several typical cases in China, where courts have grappled with unprecedented legal questions. The current academic debate encompasses three main viewpoints: the negative view emphasizes that copyrightable works must be originated directly from natural persons and argues that artificial intelligence fundamentally lacks authorship capacity; the affirmative view regards AI as merely a sophisticated tool or active co-creator with human users; while the neutral view advocates for case-by-case analysis, focusing particularly on examining the causal relationship between user prompts and the final generated contents. The core controversies involve applying the traditional thought/expression dichotomy, identifying the extent of user control over outputs, and coordinating international protection standards, etc. Against this background, this paper aims to shift the identification framework of AIGC copyrightability from a conventional result-oriented approach to a more nuanced process-oriented one, proposing specific and operational standards that can help unify judicial standards, provide practical references for courts, and offer a solid doctrinal basis for the adaptive interpretation of *Copyright Law* in the artificial intelligence era. Establishing appropriate criteria is crucial for promoting cultural prosperity and innovation without either stifling legitimate AI-assisted creation or overprotecting low-quality, machine-dominated outputs.

Keywords

generative artificial intelligence, copyrightability, originality, copyright, thought/expression dichotomy

1. Introduction

In recent years, generative artificial intelligence technologies represented by ChatGPT have developed explosively, and the creative models and works of human-machine collaboration have gradually emerged, posing fundamental challenges to *Copyright Law*. As a result, the copyrightability of AIGC has become a cutting-edge issue in judicial practice and academic studies. This wave directly gave birth to several typical cases in China [1-4]. Studies show that the core controversy centers on whether AIGC is copyrightable: the negative view emphasizes that works must directly come from natural persons, and artificial intelligence lacks

authorship; the affirmative view regards artificial intelligence as a tool or a co-creator with humans; the neutral view advocates case-by-case analysis, focusing on the causal relationship between user prompts and generated content. The core debate involves applying the thought/expression dichotomy, identifying user control, and coordinating international protection, etc. This paper aims to shift the identification of the copyrightability of AIGC from a result-oriented approach to a process-oriented one, and to propose specific and operational standards for identifying the copyrightability of AIGC. This is intended to help unify the judicial standards, provide references for judicial practice, and offer a doctrinal basis for the adaptive interpretation of *Copyright Law* in the era of artificial intelligence. Finding appropriate standards is crucial for promoting cultural prosperity without stifling AI-assisted creation or over-protecting low-quality outputs. Existing studies have extensively discussed the copyrightability of AIGC, the creator of creation, originality, the nature of prompts, the purpose of *Copyright Law*, and the attitudes towards AIGC both domestically and internationally, etc. However, the academic community has not yet fully explored the correlation between the depth of prompt iteration and originality, the number of iterations and creative control, as well as the legal effects of different intensities of control. Moreover, most of the current studies are result-oriented, lacking process-oriented studies (such as the feasibility study of creation process records as evidence for copyright registration or litigation). This paper proposes to take "the depth of prompt iteration as the core criterion, interprets originality as the combination of independent creation and creative control, and puts forward a dual review standard of prompt iteration record + human control degree, shifting the identification of the copyrightability of AIGC from result-oriented to process-oriented. This paper avoids making a one-size-fits-all judgment on the copyrightability of AIGC solely based on the authorship, the nature of prompts, and a mechanical interpretation of originality, but instead proposes specific and operational identification standards. When these standards are met, the copyrightability of AIGC is recognized; otherwise, it is not. In the theoretical background section, this paper will define the key concepts and theories in the field of *Copyright Law*. In the literature review section, it will categorize and discuss 25 domestic and foreign literature by various themes, pointing out the gaps and connections. In the discussion & synthesis section, the author will conduct a discussion on the consistencies, contradictions, trends, and limitations of the analyzed literature in this paper, and express the author's insights while articulating the author's perspectives on the copyrightability standards of AIGC. At the end of the paper, it will summarize the entire article and indicate the future research directions.

2. Theoretical Background

AIGC (Artificial Intelligence Generated Content) is not only a category of content classified from the perspective of content producers, but also a method of content production, and a collection of technologies used for the automatic generation of content [5]. Originality means that the expressions of the works are independently completed and have creativity [6]. The statement that *Copyright law* only protects the expression form of a work, but not the thoughts and content reflected in it is a generally accepted summary of the thought/expression dichotomy that comes from: The ideational aspect of a work is in turn divisible into two components: a material aspect, which comprises the content of the book and the ideas it presents, and the formal aspect of these ideas, encompassing the manner, combination, phrasing, and wording in which they are presented. What can absolutely never be appropriated by anyone else, because this is physically impossible, is precisely this form of the ideas—the specific combination and signs through which they are presented. While the content of the book, namely the ideas themselves, may be appropriated by anyone who possesses sufficient intellect and diligence to comprehend them, and can indeed become the common property of many on account of its ideational nature, the form remains inalienable. For no author can be willing to surrender this form in making his thoughts public, since anyone who appropriates his thoughts must inevitably alter their form; consequently, this formal element remains forever his exclusive property [7]. Anthropocentrism maintains that interpreting "authors" and "authorship" under the Convention as pertaining to the persons who created such works is not only logical but also supported by powerful arguments of both principle and necessity, favoring the retention of this human-centered conception of authorship and authors' rights [8]. Conversely, post-anthropocentrism advances a posthuman view that configures human beings through various means so as to be seamlessly articulated with intelligent machines, thereby dissolving any essential differences or absolute demarcations between bodily existence and computer simulation, cybernetic mechanism and biological organism, and robot teleology and human goals [9]. Inspiration came to be regarded as emanating not from outside or above, but from within the writer himself. Inspiration came to be explicated in terms of original genius, with the consequence that the inspired work was made peculiarly and distinctively the product and the

property of the writer [10]. Prompt engineering is the formal search for prompts that retrieve desired outcomes from language models, where what is desirable is dependent upon the end task and end user [11].

3. Literature Review

3.1 The Creative Subject and Authorship of AIGC

This paper analyzes discussions on the distribution of the identity of the creative subject and the authorship/copyright owner. Some scholars believe that it is humans who created AIGC, and generative artificial intelligence is merely a tool, so the author (copyright owner) is undoubtedly human. However, there are differences in the specific attribution of the authorship (copyright owner): some scholars who consider the user to be the author either believe that the user plays a leading and decisive role in the creative process and has ultimate control [12-14]; or, while acknowledging the significant contribution of generative artificial intelligence, they believe that the user's contribution is sufficient to make them the author (copyright owner) [15-17]; or they assert that the person who uses the tool (generative artificial intelligence) to create has the qualification of an author(copyright owner) due to their original intellectual input [18]; or they affirm that, considering the systematic coordination of current laws and the public policy goals of *Copyright Law*, it is appropriate to attribute the authorship (copyright owner) to the user [19]; or they advocate making case-by-case judgments based on the user's original and substantial contributions [20,21]. Scholars who advocate for other creative subjects as the author (copyright owner) either assert that, to provide appropriate incentives for the developers of artificial intelligence technology and those who may purchase such technology to develop creative works, it is reasonable to grant copyright to the programmer/originator/programmer (when they have ownership) [22]; or they believe that the traditional concept of the author, which is closely linked to human identity, may not fully reflect the abstract reality of works generated by artificial intelligence [23]; or they assert that the majority of the creative ideas in the creative outcome originate from the owner [24]. Some scholars also believe that AIGC is created jointly by humans and generative artificial intelligence, and the status of generative artificial intelligence is higher than that of a tool. Therefore, they propose the view of separating the author from the copyright owner. They either advocate regarding generative artificial intelligence as the author and the user as the copyright owner [25-27], or they advocate regarding generative artificial intelligence as the author and the owner as the copyright owner [28]. There are also scholars who believe that it is generative artificial intelligence that created AIGC, emphasizing the autonomy of generative artificial intelligence and the insufficiency of human control. They either base their argument on the provisions of Article 3, Paragraph 1 of the Regulations for the Implementation of the *Copyright Law* [29] to assert that it is generative artificial intelligence that directly generates or determines AIGC [30,31]; or they use the prompt as an entry point to indirectly prove that humans are influencing rather than determining the creative outcome [30,32,33]; or they affirm the powerful capabilities of generative artificial intelligence and consider it the creator of information [34].

3.2 Copyrightability of AIGC: Purposes and Approaches

Firstly, this paper analyzes discussions surrounding the legislative purpose of *Copyright Law*, the purpose of stimulating the development of the artificial intelligence industry and technology, and the necessity of incorporating AIGC into *Copyright Law*: Some scholars argue that incorporating AIGC into *Copyright Law* is contrary to the purpose of incentivizing human to create, as generative artificial intelligence cannot be incentivized [30,34]; others believe that scarcity, diversity, and value are the basis for works to be protected by *Copyright Law*, and AIGC does not possess these characteristics and even undermines them [33,35]; some suggest that not incorporating AIGC into *Copyright Law* is more conducive to the development of the artificial intelligence industry and technology [31]; and some argue that the effect of incentivizing innovation can be achieved without incorporating AIGC into *Copyright Law* [36], such as through Anti-Unfair Competition Law (trade secret protection), special rights for databases, neighboring rights, etc [17,37]. Other scholars assert that the creation of AIGC necessarily involves human participation, and thus incorporating AIGC into *Copyright Law* is not only beneficial for stimulating innovation and unleashing creativity (excluding works completely generated by generative artificial intelligence) [12,15,18,25-28], but also conducive to the development of the artificial intelligence industry and technology [14,18,19,25]. Some scholars also point out that incorporating AIGC into *Copyright Law* is conducive to the realization of one of the fundamental missions of the intellectual

property system, expanding the public domain [13]. Then, this paper analyzes discussions on the response of *Copyright Law* to AIGC: Some scholars believe that *Copyright Law* should maintain the status quo and not incorporate AIGC. They either think that AIGC doesn't need to be protected and should not be [30-35], or believe that it can be protected through means other than *Copyright Law* [17,36,37]. Some scholars advocate for incorporating AIGC into the scope of protection of *Copyright Law* through expanded interpretation on the existing basis, conditionally [12-16,18-20,22,24,25]. Some scholars also propose making certain modifications or creating new provisions to the *Copyright Law* to incorporate AIGC [14, 21-23, 26-28].

3.3 Originality

Firstly, this paper analyzes the debate regarding the identification of the source of originality: Some scholars believe that the identification of the source of originality should be based on the final expression form, focusing on the definition of the nature of prompts. They either compare prompts with consultation opinions and guidance suggestions [30,31]; or explain the black box attribute of generative artificial intelligence [32], the existence of random noise and random seed [31] to prove that prompts can't fully control and predict the generation process and results of generative artificial intelligence, and thus advocate that prompts aren't protected expressions but thoughts. Other scholars, however, advocate that the focus of identifying the source of originality should shift to the creative process of the user, including the selection, wording, construction, detail level, iteration and modification process of prompts [12,14,24] and the intellectual activities behind them [12,15], rather than the nature of prompts. Secondly, this paper analyzes discussions on the criteria of originality: Some scholars believe that new and more characteristic criteria suitable for AIGC should be introduced. Scholars proposing the creative control standard (that users must have sufficient predictability, control and dominance of the generation process and results of generative artificial intelligence) advocate the free will (categorical intention) of the user, making the unpredictability of AIGC within the predictable range and the uncontrollability within the controllable range as sufficient [12, 15-17]; or propose that generative artificial intelligence can't completely operate independently of human control (it belongs to a tool), thus humans have dominance [13,16,17,25]; or point out that continuous modification based on the previous generated content has control [20]. Scholars advocating the substantial contribution standard (that users' contribution to AIGC must be substantial and indispensable) advocate that non-human participation cannot be used to deny or devalue human contributions [15,19,28]; or propose that human intervention should not be too simple (such as simple data selection and classification), and it is necessary in the creative process [21,23]. In summary, scholars all agree that *Copyright Law* should embody humanism, aim to encourage creation, respond to the challenges brought by AIGC, and that AIGC must possess originality. However, they have differences regarding the identification of the author of AIGC, what kind of creation *Copyright Law* should encourage, how to respond to AIGC, and how to interpret originality.

4. Discussion & Synthesis

4.1 Consistencies

Content purely generated by generative AI on its own, with humans only providing simple prompts, should not be protected; *Copyright Law* protects human works, that is, "humanism"; *Copyright Law* needs to respond to challenges brought by AIGC, and such a response must be in line with the spirit and principles of *Copyright Law*. In addition, where there are consistencies, there are contradictions. The specific dimensions of contradictions are according to Table1.

4.2 Contradictions

Table 1: Contradictions between the negative, affirmative and neutral views.

Dimension of contradictions	The negative view	The affirmative view	The neutral view
Creative subject	Generative artificial intelligence [30,32-37]	Humans [12,13,15-19,22] /humans and generative artificial intelligence [25-28]	A case-by-case assessment should be made [14,20,21,23,24].
Originality	Not possess [34,36]	Possess [12,15,17,19,25,28]	
Control & Predictability	Humans lack them [30-33]	Adequate control and prediction are enough [12,13,15-17,25]	

Dimension of contradictions	The negative view	The affirmative view	The neutral view
The nature of prompts	Thoughts [30-32]	Possible expressions [12,15,17,18]	Possible expressions [14] /protectable thoughts [24]
Legislative purpose	Contrary [30,33-35]	In line with [12,13,15,18,25-28]	In line with [14]
Creation methods	Humans can't "talk" paintings [31]	Humans can "talk" paintings [12,15,18]	Not discussed yet.
Views of Romantic authorship	Most insist Romantic authors view & anthropocentrism and reject AIGC [34]; a few criticize [37]	Deconstruct and criticize the Romantic author view, advocate post-anthropocentrism and embrace AIGC [16,22,28]	
The response approach of *Copyright Law*	Remain unchanged [30-37]	Expand interpretation [12,15,17,18,22,25,26,28]/Make modifications or create new provisions [22,27]	Expand interpretation [14,24]/Make modifications or create new provisions [14,21,23]
International protection	Disadvantageous to the coordination of international protection [32]	Acknowledge the differences in international protection [28]	Support international collaboration and formulate consistent standards [23]
Scarcity	Lack, or even undermine [33,35]	It still exists, but has just been transferred elsewhere [12]	New scarcity can be created [24]
"Generate directly"	Works must be directly generated by humans [30,33]	Works can be indirectly generated by humans [16]	Interpret generate directly as cause directly [20]/Cite employment works to refute [14]

4.3 Trends

An increasing number of studies are gradually shifting the focus of copyright protection from the authorship to originality itself, arguing that as long as the creative process or the final expression demonstrates sufficient originality, it should be examined for protection, rather than being excluded from the scope of *Copyright Law* simply because the creative subject includes generative artificial intelligence. Scholars are adapting to the changes brought by AIGC by introducing specific quantifiable standards such as creative control and substantial contribution. Additionally, due to the rapid iterative development of generative artificial intelligence, more and more literature is beginning to focus on the creative value of prompt engineering. Existing studies are moving from the strict requirement of the author's absolute control over the work to acknowledging the black box nature of generative artificial intelligence and emphasizing that through regulating the iterative process of prompts, humans will gradually enhance their control over AIGC to a sufficient degree, without the need for complete control. Scholars are shifting from a general study of artificial intelligence to a detailed classification of different types such as auxiliary AIGC (weak artificial intelligence), human-machine collaboration (strong artificial intelligence), autonomous AIGC (super artificial intelligence), general artificial intelligence (AGI), and narrow (specific) artificial intelligence, attempting to discuss and protect them categorically. At the same time, scholars are also recognizing the increasing capabilities of artificial intelligence and the possibility of its future autonomous creation. Some studies have begun to explore the separation of author and copyright owner, acknowledging that generative artificial intelligence can't enjoy rights or bear obligations while also affirming its contributions in the creative process. Therefore, they advocate allocating authorship to generative artificial intelligence and copyright to humans. This is a flexible adaptation to the growing power of generative artificial intelligence in response to the traditional unity of copyright owner and author. Scholars are analyzing and referring to the judicial practice and trends in the AIGC field in the United States, the United Kingdom, Europe, Japan, etc, attempting to construct and seek a unified international coordination approach. Scholars are expanding their focus to the supporting systems after the identification of the copyrightability of AIGC (such as the legal obligation to indicate the source of AIGC, setting the burden of proof for copyright owners regarding AIGC, and establishing a compensated compulsory licensing system)

and other relief measures outside of *Copyright Law* (such as Anti-Unfair Competition Law (e.g., protection of trade secrets), special rights protection for databases, and neighboring rights).

4.4 Limitations

Scholars either focus on incentivizing humans or the AI industry and AI users, but rarely on the maintenance of the public domain and the impact on other subjects in the AIGC industrial chain, such as developers, platform operators, content distributors, and end consumers. The negative view overly emphasizes the uncontrollability and unpredictability of the generation process and the non-expressive nature of prompts, while the affirmative view overly emphasizes the original appearance of the final outcome, lacking a detailed analysis of the dynamic relationship between process and outcome. Although existing studies have discussed various differences in international protection of AIGC, most either do not mention international protection coordination or merely discuss the facts and harms of international protection incoordination and the possibility of future unification without further research on specific measures. Most studies mainly adopt analytical methods within the field of law, and the professional analysis of specific issues related to the actual operation mechanism of AI technology (such as the source of randomness in model training and generation processes, the black box characteristics, etc.) is not deep enough, resulting in a disconnection between legal arguments and technical reality. In addition, some studies that mention stimulating investment and industrial development also rarely combine with economics for specific arguments, leaving the research at the theoretical level.

4.5 Author's Insights & Perspectives

The author advocates for redefining originality as a dual structure of independent creation and creative control, establishing a dual review standard of prompt iteration records + human control degree. First of all, when courts are hearing cases regarding the copyrightability of AIGC, they should require the plaintiff claiming AIGC copyright to provide prompt iteration records: the content of the initial prompt, prompt versions, multiple rounds of adjustment records, time stamp records of prompt iterations, the number of iterations, screening criteria, detailed explanations of parameter settings, screenshots of the generation records of the AI platform, post-adjustments, and reasons for the final selection, and bear the burden of proof for the depth of prompt iterations. If the substantial control and original intellectual input standards are met, it should be identified that it meets the originality requirement. Furthermore, it is suggested to establish a three-level review standard for the depth of prompt iterations: (1) shallow iterations (single prompt, no parameter adjustment): This is the minimum control, and, in principle, originality is denied; (2) medium-level iterations (multiple rounds of prompt adjustments, minor parameter adjustments): This is the partial control, and originality can be preliminarily recognized; (3) deep iterations (multiple rounds of dialogue, detailed parameter settings, post-adjustments): This is the complete control, and originality should be affirmed. Moreover, in the context of AIGC, the application of the thought/expression dichotomy should pay attention to the specific degree of prompts: if prompts only describe simple functional requirements, they belong to the thought category and aren't protected; if prompts detail the expression characteristics and the result is reproducible, they belong to the expression category and can be protected. Finally, under the premise of affirming the copyrightability of AIGC, it should be clear that the copyright belongs to the user who implements prompt iterations and demonstrates creative control. If multiple people are involved, the actual participants in the prompt iterations and their contribution degrees should be reviewed.

5. Conclusion

This paper reviews the theoretical debates within the Chinese and foreign legal communities regarding the copyrightability of AIGC from 2020 to 2025. The studies indicate that the current disputes have transcended the simplistic binary opposition of protect/not protect, presenting a refined theoretical stratification: the negative view adheres to anthropocentrism, safeguarding the normative purity of *Copyright Law*; the affirmative view advocates for adjusting the standard of originality to accommodate the new reality of technology-enabled creation; the neutral view, on the other hand, promotes case-by-case analysis, seeking a balance between the flexibility of rules and the stability of the law. Future research should transcend the metaphysical debate surrounding subject qualification and shift toward a substantive evaluation of human contribution, establishing a multidimensional assessment framework that incorporates prompt complexity, iteration controllability, and post-generation modifications. Concurrently, attention must be given to ancillary

systems such as AIGC labeling obligations and transparency requirements, thereby forming a comprehensive regulatory chain encompassing copyrightability identification, rights attribution, and infringement liability. Against the backdrop of accelerating technological iteration, *Copyright Law* should maintain appropriate openness and adaptability, striving for a dynamic equilibrium between incentivizing innovation and preserving the public domain. The author contends that, as generative artificial intelligence technology continues to evolve, the controllability between prompts and generated outcomes will progressively increase, necessitating dynamic adjustments to the criteria for AIGC copyrightability to balance technological advancement and legal protection. It is recommended that the Supreme People's Court issue guiding cases or judicial interpretations in a timely manner to clarify the standards for assessing prompt iteration depth and the corresponding burden of proof, thereby unifying adjudicatory practices across national courts.

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