

On the Determination of Copyright Infringement of Artificial Intelligence Generated Objects

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Abstract

This article discusses the infringement problem of artificial intelligence (AI) generation in the field of copyright based on the "First AICG case" heard by Guangzhou Internet Court. With the wide application of AI technology, the boundaries between AI generated works and original works are becoming increasingly blurred, which has triggered legal disputes. This article focuses on whether AI generated objects may infringe the copy right, adaptation right and information network dissemination right of the copyright owner, and through analyzing the case, puts forward the thinking on the type of copyright infringement of AI generated objects, aiming to provide theoretical reference for legal practice, promote the progress of the relevant legal system, and ensure the legalization and standardization of the development of AI technology, so as to safeguard the social justice, stabilize the market order, and promote the harmonious development of science and technology and society. harmonious development of science and technology and society.

Keywords

Copyright; Artificial Intelligence; Generation; Infringement Determination

Introduction

With the rapid development of science and technology, Artificial Intelligence has been gradually integrated into all corners of our lives, significantly improving productivity and bringing unprecedented convenience to people. However, the intelligentization of AI technology is accompanied by the emergence of a series of new social and legal issues.

Recently, the Guangzhou Internet Court publicly heard and pronounced a high-profile civil case, which is widely known as the "AICG first case", and is the world's first case of generative AI services infringing on other people's copyrights. In this case, the plaintiff, Shanghai Xinchuanhua Culture Development Company Limited, filed a lawsuit against an AI technology company. The plaintiff discovered that the website operated by the defendant had AI dialogue and drawing functions,

and that the image of Ultraman generated was extremely similar to the image of Ultraman to which the plaintiff company was entitled to an exclusive license and the right to independently defend its rights.

It is worth noting that the plaintiff initially filed a lawsuit based on a dispute over online infringement liability, rather than directly targeting copyright infringement. However, during the trial of the case, the plaintiff filed an Application for Change of Claim on February 1, adjusting the cause of action to a dispute over copyright infringement and claiming that its reproduction right, adaptation right and information network dissemination right had been infringed upon. After a careful trial, the court finally found that the defendant had infringed the plaintiff's reproduction and adaptation rights. Given that the infringement was already covered by the reproduction right and adaptation right, the court did not repeat the trial on the infringement of the right of information network dissemination.

Based on this typical case, this article will deeply analyze and discuss the types and characteristics of AI generation in the field of copyright infringement, especially on the core issues of whether AI generation may infringe the reproduction right, adaptation right and information network dissemination right of copyright owners.

1. The Dispute over the Right of Reproduction of Artificial Intelligence Generated Material

As we delve into the complex interactions between artificial intelligence and copyright law, we must take a comprehensive look at the adoption of material by AI in its learning process and the legal attributes of its final generated objects. AI systems have the ability to extract learning material from public domain and copyrighted works, and will retain copies of that material. In some cases, if an AI-generated result is substantially the same or extremely similar to a right holder's work in terms of its core expression, and at the same time does not obtain the right holder's lawful consent, then such behavior may violate the reproduction right under copyright law. On this issue, we need to carefully analyze whether AI's generating activities should be categorized as acts of reproduction. Although there are obvious differences between the generation process of AI and traditional methods of reproduction, such as digital copying, on the surface, given that the reproduction right in the copyright law does not strictly limit the form of reproduction, the generation process of AI may also be fundamentally regarded as an act of reproduction. In the formation process of AI generation, the AI may concentrate on learning the work of a particular author for a certain period of time, which may result in the generation being stylistically very similar to that author's work. In addition, the processing carried out by the AI in grabbing the content of the work is random, and sometimes it may copy parts of the original work as it is, and thus its generates may infringe the original author's right of reproduction. In the legal judgment of the "AICG first case", the court accepted the plaintiff's allegation that the reproduction right had been infringed.

Since China's third amendment to the Copyright Law of the People's Republic of China (hereinafter referred to as the Copyright Law) in 2020, Article 10, item 5 explicitly includes a new provision on digital reproduction. This involves two core reproduction right links in the copyright law: the first is the crawling of existing works by AI, and the second is the output of AI-generated materials. In the capture process, if the work is a copyright-free resource in the public domain, then the process is not legally controversial; however, if the work is protected by copyright and the AI captures it without the authorization of the author, then the capture and subsequent commercial exploitation such as copying, storing, and learning may violate copyright law.

2. Dispute over the Adaptation Right of Artificial Intelligence Generated Objects

When discussing the legal boundaries between artificial intelligence generated works and the right of adaptation, it is first necessary to clarify the legal connotation of the right of adaptation. According to Article 10 of the Copyright Law, the right of adaptation covers the right to alter an existing work and create a new work with unique characteristics. The key to the exercise of this right lies in the fact that the new work, while maintaining the basic characteristics of the original work, must also embody substantial differences from the original work in order to meet the criteria for recognizing a "new work".

In the "AICG Rush First Case," the plaintiff claimed that some of the generated works infringed on its adaptation right by incorporating images of its and other copyright holders' works (e.g., the fusion of "Ultraman and American Girl Warrior"). This claim was recognized by the court, highlighting the potential legal implications of the right of adaptation if the generative objects, while maintaining the characteristics of the original work, develop new characteristics.

However, controversy abounds when exploring the copyrightability of AI-generated works. Although in a case heard by the Beijing Internet Court, the court found the copyrightability of generated AI works, this view has not yet been agreed upon in the academic community. It is worth noting that whether AI-generated content constitutes a "new work" is not the only criterion that directly determines whether it involves infringement of the right of adaptation. The essence of the right of adaptation lies in the fact that, on the basis of retaining the basic features of the original work, the generated work is substantially different from the original work through the addition of new elements. Whether such differences fulfill the legal requirement of "originality" is the key to distinguishing the right of adaptation from the right of reproduction. If the AI product is objectively significantly different from the original work, and such difference reflects the element of innovation, it should be included in the scope of adjustment of the right of adaptation. This judgment process does not depend entirely on whether the generated work is recognized as a "work" by the

law, but is based on the analysis of the objective differences between it and the original work. The process of creating AI generated works usually involves parsing, learning and reorganizing the original work. In this process, the AI will inevitably retain some of the basic expressions of the original work. However, this does not mean that AI-generated objects necessarily infringe the right of adaptation. Whether it constitutes infringement depends on how the AI parses and reorganizes the original work. For example, in AI painting, if only the background, characters, props and other elements are simply separated and learned, the generated work may not constitute an infringement of the right of adaptation.

With the continued progress of AI technology, this potential infringement risk is expected to be gradually reduced. However, this requires further maturation and improvement of AI technology to ensure that the captured data samples can be more accurately processed and reorganized during the creation process, thereby reducing the duplication rate with the original work and reducing the risk of infringement.

3. The dispute over the right to information network dissemination of artificial intelligence generators

In exploring whether generative AI services infringe the right to information network dissemination of the right holder, we need to analyze in depth the mechanism of their operation and the nature of the infringement. If such services generate works that are highly similar to the works of the right holders according to the needs of the users without the explicit authorization of the right holders, we need to clarify whether such acts are equivalent to making the works available to the public through wired or wireless means, so that the public can access these works at any time and place.

From a user's perspective, there is a formal similarity between accessing works through generative AI and accessing works through traditional Internet services. Traditional ISPs, such as video or photo websites, that enable users to access works without authorization are usually considered to be infringing the right to information network communication. This similarity may raise questions about whether generative AI services also constitute such infringement. In the "AICG Rush First Case," the plaintiffs alleged infringement of the right to information network communication. However, after analyzing the principle of generating artificial intelligence, we found that the process does not include the element of "providing" in traditional information network communication behavior, and therefore should not be recognized as infringement of the right of information network communication.

The element of "making available" means that the network service provider places the work in a publicly accessible information network through wired or wireless means, so that users can access the work at a selected time and place. This usually involves uploading the work to a server, setting up shared files, or utilizing file-sharing software. According to paragraph 2 of Article 3 of the Provisions of the

Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Civil Dispute Cases Involving Infringement of the Right to Disseminate on the Information Network, there are various forms of behavior that can be provided. It is worth noting that what is disseminated in the information network is a digital copy of the work. In traditional network services, the infringer uploads digital copies of the work into cyberspace, and users subsequently access these copies by browsing or downloading. Throughout this process, there is always a digital copy accessible to the user in the information network, supporting "one-to-many" interactive dissemination.

In exploring AI-generated works, we need to be clear about the role of digital replicas and the stages of their existence. These replicas function in two main phases: the training phase and the generation phase. In the training phase, digital replicas of works are used as training materials to optimize and pre-train models, while in the generation phase, new works are generated based on these training results. Although the training phase involves the use of copies of the work, it is not the same as the act of "making available", since it does not involve the real-time dissemination of the copies in an information network. In fact, training is centered on the formation of model parameters, a process that may not be dependent on the information network. After training, the digital replica does not exist directly in the model, nor does the model directly "store" the work.

In the generation phase, the AI does not simply propagate existing digital reproductions, but generates new works in real time according to the user's instructions. Although these newly generated works are substantially similar to the original works, the results of each generation are different. Thus, there is no digital replica that is always accessible to the user during the interaction between the AI and the user. The digital replica obtained on the user's end is not directly derived from the replica of the work in the training data, but is independently generated by the AI model according to the user's instructions.

In summary, from a legal point of view, generative artificial intelligence services do not constitute an infringement of the right to disseminate information networks.

Conclusion

Based on an in-depth analysis of the case of *Xinchuanguhua v. A Technology Company*, this article discusses in detail the issue of copyright infringement in the process of artificial intelligence creation. Firstly, it discusses the possible infringement of copyright in the creation stage, especially the two core rights and interests, namely, the reproduction right and the adaptation right. Regarding the reproduction right, since the current law does not set a specific form of reproduction for the definition of the reproduction right, the generation process of artificial intelligence can be regarded as a kind of reproduction behavior. And when discussing the right of adaptation, we should avoid a mechanical and literal interpretation of the legal provisions and re-

turn to its original legislative intent. As long as the generated product exhibits objective and substantial differences from the original work while maintaining the basic expression of the original work, it may touch the infringement category of the right of adaptation. Further from the principle of creation of artificial intelligence, we can make it clear that in the generative stage, artificial intelligence is not involved in the infringement of the right of information network dissemination.

Generative artificial intelligence industry is in the early stage of development, whether legislation or judicial decision, should take into account the industry in the current generation of artificial intelligence industry in the initial stage, for the construction of legal norms is particularly critical. In legislation and judicial practice, we need to consider both the vigorous development of the industry and the solid protection of rights and interests. In determining infringement, moderately reducing legal liability is an effective way to promote development and protect rights and interests. According to the provisions of the Copyright Law, a variety of fair use scenarios have been specified, and the use of these scenarios is exempted from legal prosecution. Therefore, it is recommended that relevant enterprises strictly follow the principle of fair use and regulate their data use behavior. In addition, we should actively utilize data resources in the public domain, such as data that has exceeded the protection period or does not constitute a work in itself. If there is a genuine need to use data works that are still under the protection period and do not meet the conditions of fair use, then enterprises should actively communicate with data right holders to obtain their explicit authorization. If the scale of data use involved is huge, it is also necessary to rely on the professional power of copyright collective management organizations to ensure compliance and legality of use. Such an approach is not only conducive to the healthy development of the industry, but also effectively protects the rights and interests of all parties.

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