

On the Protection via Neighboring Right of Artificial Intelligence Generated Content (AIGC)



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Abstract: The understanding and application of copyright law with regards to AI generated images has created significant challenges. China and the United States demonstrate that the judicial bodies of the two countries have distinct differences in their attitude towards copyright protection of AI generated material. The reason is that the generation process of artificial intelligence generator includes two stages of user input instruction and automatic generation of artificial intelligence program. The discussion focuses on the personalized characteristics of the instructions in the user input stage and the automatic characteristics stage, which will determine whether the artificial intelligence generated material can be protected by copyright. This paper argues that the neighboring rights approach can better integrate these two stages. By comparing the object of rights, the subject of rights, and the content of rights between AI generated works and existing neighboring rights, it can be found that AI generated works are in conformity with neighboring rights, which can resolve the dilemma of "either this or that" choice faced by the copyright approach. However, neighboring rights are typical statutory rights and need to be coordinated with the copyright protection of the existing works used by artificial intelligence. Whether it is necessary to legislate on neighboring rights for artificial intelligence generated works still awaits further observation over time.

Keywords: Artificial Intelligence Product; Neighboring Right; Copyright; Legality

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1 Introduction

Technology in the present day is shaping not only the environment surrounding us, but it is also changing the way we think and create [1]. China and the United States have been examining whether artificial intelligence (AI) products can be identified as works in the context of copyright

law, and in doing so they have come to contrasting conclusions. The first case of copyright in China (Li v. Liu) was announced instance in November 2023,^① The Beijing Internet Court in China ruled that the plaintiff holds the copyright of the AI-generated picture "The Gentle Breeze of

①See Li v. Liu, (Beijing Internet Court, 2023) (China). This case is not the first case regarding artificial intelligence-generated works in China. The previous Feilin Case (Beijing Film Law Firm v. Beijing Baidu Netcom Technology Co., Ltd) and Dreamwriter Case (Shenzhen Tencent Computer Systems Co., Ltd. v. Shanghai Yingmou

Technology Co., Ltd.) are all copyright dispute cases related to artificial intelligence-generated works. The differences lie in that the Feilin Case involves the visual graphics and text reports generated by artificial intelligence, the Dreamwriter Case involves the text-based articles generated by artificial intelligence, and the Breeze Picture

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<http://www.humarts.net>

Spring" which at the center of the case. The main reason they came to this conclusion was that the specific instructions that were input by the plaintiff into the AI program reflect personalized expression and thereby possessed originality. In addition, the plaintiff's repeated adjustments to the picture was also regarded as intellectual labor. With these facts in consideration, it was ultimately decided that the picture conformed to the definition of a work required for copyright protection to apply.

The second case of copyright of artificial intelligence pictures in China (Lin v. Hangzhou Gauss Gas Film Technology Co., Ltd.) reached a judgment in November 2024. The Changshu City Court in Jiangsu Province, China also recognized the copyright of the artificial intelligence pictures. The particularity of this case also lies in the fact that the copyright registration certificate held by the plaintiff was recognized by the court and became an important piece of evidence for the plaintiff's eligibility.^② In the absence of clear provisions in the law regarding whether artificial intelligence generated works can be copyrighted, China has initiated the case-by-case determination model [2]. In August 2023, the United States Federal District Court made a preliminary ruling in the Thaler v. Perlmutter case, upholding the decision of the United States Copyright Office that the AI-generated pictures do not constitute works and subsequently rejected Thaler's application for copyright registration. The main reason for coming to this conclusion was that the in the US author, in the context of copyright law, must be a natural person. Due to this distinction AI-generated works do not fall under the control of the user, so it cannot be recognized as a work.^③ The reason for such disparities lies in the fact that the Chinese and American rulings have different emphases on the evaluation of different stages in the development of artificial intelligence generated works.

The Chinese judgments focus on assessing whether the personalized choices of user instructions are aligned with the originality of the works, reflecting an objectivist method. The American rulings hold that the automatic generation process of AI is of ultimate and substantial significance for the generation of pictures, and the user's instructions do not directly determine the generation of the generated works, reflecting a subjectivist approach. There is value in both of these perspectives, but they are both biased together. As for whether the copyright of AI products may

constitute work, is not only be a scientific or technical issue, but also a matter of legal norms [3]. In the current regulatory system, the neighboring rights approach is worthy of reference.

When assessing the history of neighboring rights, the object of neighboring rights does not necessarily require the establishment of a work. Instead, the neighboring rights and interests of relevant subjects are specifically set according to the actions of relevant subjects and the value of corresponding objects. This characteristic can effectively reconcile and resolve the separated state between the personalized choices of users and the automatic generation by AI programs. The protection of AI generated works through neighboring rights can be highly influenced by the traditions of neighboring rights in terms of the object of rights, the subject of rights, and the content of rights. Meanwhile, it can also avoid the impact on the basic principles of authorship and human-authored work which are central to copyright law.

2 Analysis of the Conformity of the Object of Neighboring Rights

The object of neighboring rights is different from that of copyright. The object of copyright is based on works, while the object of neighboring rights does not require works as a necessary element. The recognition of works follows a unified paradigm, which is generally judged according to the legislative purpose of copyright law, the definition of works, and the definition of creation. However, when analyzing international treaties on neighboring rights and the legislative provisions of several other countries, there is no unified definition of neighboring rights, nor is there a unified specification regarding the object. Instead, neighboring rights are only stipulated for specific objects.

The neighboring rights system is a product of modern communication technologies [4]. With the development of communication technologies and the momentum from international trade in copyrights, the Rome Convention was the first to make provisions on neighboring rights. Constrained by the tradition of author's rights, the Rome Convention presented a situation of standing side by side with the Berne Convention. It was not until the Agreement on

Case involves the pictures generated by artificial intelligence. From the perspective of the specific types of the generated works, the Breeze Picture Case can be called "the First Case of Copyright of

Artificial Intelligence Pictures in China".

② Lin v. Hangzhou Gauss Gas Film Technology Co., Ltd.

③ See Thaler v. Perlmutter (22-1564(BAH)).

Trade-Related Aspects of Intellectual Property Rights integrated the protection of copyrights and neighboring rights that neighboring rights officially became an integral part of the copyright system. The Rome Convention outlines the rights of performers, the rights of producers of phonograms, and the rights of broadcasting organizations. The three most typical objects of neighboring rights are, respectively, the performing activities of performers, phonograms, and broadcasting signals. Regarding the question of whether the content of a performance can be considered a work, the Rome Convention states that the content of a performance must be a literary or artistic work [5]. The WIPO Performances and Phonograms Treaty and the Beijing Treaty on Audiovisual Performances further states that the content can be expressions of folklore. However, the Rome Convention allows each contracting state to define performers in a more broader manner, so there are differences in the provisions of each contracting state. For example, the Japanese Copyright Law defines performance to include performing acts that do not perform works but have the nature of public entertainment, while the French Intellectual Property Code also characterizes jugglers, circus performers, and puppeteers as performers. China has not provided a clear definition of performer, and its relevant provisions align with international treaties.

It is important to note, with reference to performances, that the sounds recorded in a phonogram may not be works. Article 3 of the Rome Convention defines a "phonogram" as "any exclusive recording of the sounds of a performance and other sounds". According to the aforementioned definition of performance, the sounds of a performance can include the sounds of performing works or the sounds of content that do not constitute a work, and there are no special limitations on other sounds. This means that in addition to the common recordings of performances such as concerts and galas, the sounds of birds singing, waves crashing, and rain falling in nature can also be the objects of recording. The broadcasting organization's signal is merely a technical means to transmit broadcast programs, and the content it carries may or may not be considered a work.

The provisions of international treaties show that neighboring rights are not limited to works under copyright law, a fact also evident in neighboring rights legislation across

various countries. In addition to the three most typical types of neighboring rights mentioned above, various countries also provide protection for neighboring rights concerning specific objects. The copyright laws of Germany, Italy, and Spain offer neighboring rights protection for specific versions and ordinary photos lacking in originality. The Italian copyright law also states that many types of neighboring rights such as non-original stage set designs, names and titles related to works, etc. Meanwhile, the Chinese copyright law stipulates that publishers enjoy neighboring rights for the layout design of books and periodicals. Moreover, the Database Protection Directive adopted by the European Union in 1996 states that regardless of whether a database is original or not, as long as it reflects a huge investment in terms of the quantity or quality of data, the investor will obtain neighboring rights. Some EU member states have chosen to specifically create a neighboring right in their copyright laws to implement this. Several viewpoints suggest that AI generated works can be protected in a similar form of special law [6].^④

The basic characteristics of the objects of neighboring rights stipulated in international treaties or national legislations share commonalities. First, neighboring rights all have certain objects. The act of dissemination is distinguished from the object being disseminated, and a mere act of dissemination that does not form an object is not sufficient to serve as an object of neighboring rights. Secondly, the objects of neighboring rights do not require the formation of works. When copyright uses human originality as the criterion for identifying works, there will inevitably be some content with literary, artistic, and scientific values that cannot constitute works. In contrast to the strict requirements of copyright for works, neighboring rights have broadened the extension of works, incorporating sounds, landscapes, designs with aesthetic values, and so on into the scope of protection. This includes natural sounds known as "works of nature" that originally only existed in nature. Once content similar to that of nature can be included in the objects of neighboring rights, it means that the evaluation standard of human originality for the objects of neighboring rights is no longer applicable, and the identity of the author or the author as a natural person is no longer necessary [7].

④ However, it should be noted that there are obvious differences between artificial intelligence-generated works and databases. Databases require continuous maintenance to provide services. Once they stop running, they can no longer provide services. On the other hand,

artificial intelligence-generated works are already determined once they are generated and do not require subsequent maintenance, which is more similar to the characteristics of sound recordings.

Finally, the formation of the objects of neighboring rights embodies human labor. The era when the "sweat of the brow" principle was used to justify copyright has passed [8]. However, it still holds considerable value in supporting neighboring rights protection. From the physical and mental dedication of actors to the huge investments in the phonogram industry and the broadcasting organization industry, all reflect the labor of relevant subjects. These labors provide the original works, or the content that does not constitute works, with different forms of expression, or fix the content that originally existed in nature onto specific carriers, thus forming certain labor achievements. Laborers should enjoy specific neighboring rights and interests regarding these labor achievements. AI generated works fully conform to the characteristics of the objects of neighboring rights.

Firstly, once AI generated work is produced, it becomes an objective entity. Generative AI holds countless potential generation possibilities. However, when the generated work comes into being, it is no longer a mere possibility but a specific replicable content with a certain form of expression, that objectively exists. Secondly, AI generated works possess literary, artistic, and scientific characteristics. Objectively, they already have the same appearance as works created by natural persons. Moreover, with the improvement of data processing capabilities, the complexity of the procedures, levels, and architectures of generative AI is even higher than that of works created by natural persons. The general public can no longer identify whether a work is an AI generated work in terms of form. While the literary, artistic, and scientific values of AI-generated works may not be identical to those created by humans, they still objectively hold such values. Thirdly, the formation of AI generated works reflects the labor of the users. Before users input instructions, the generated works may already exist in the AI program. Only when the users input instructions – after investing a certain amount of labor – can they be presented. Defining AI generated works as the objects of neighboring rights can avoid disputes related to the subjective and objective standards of the originality of works. It can also avoid the violation of the confusion principle. The generation principle of AI indicates that there is a distinct or constrained relationship between the instructions given by a user and the content that is produced in response. Since the generated content arises from an automated process and is not the product of human creativity or originality, it cannot be afforded copyright protection.

Currently, the scope of neighboring rights demonstrates

greater inclusiveness for AI generated work, compared to that of copyright law. Several other perspectives therefore suggest that the existing neighboring rights can be extended to the similar content in AI generated works [9]. However, it is obvious that AI generated works are not limited to the scope of existing objects of neighboring rights. For other content, other means of protection still need to be sought. Some Chinese scholars (Such as Zheng Chengsi) have refined the objects of neighboring rights into "all media for disseminating works" and content that "has forms of expression containing ideas but cannot become works". This definition is very promising and broad, and it holds significant guiding importance within the context of AI generated work.

3 Analysis of the Conformity of the Subject of Neighboring Rights

The labor of the subjects of neighboring rights enables the final formation of the objects of neighboring rights. Without the input of the subjects of neighboring rights, there would be no corresponding objects of neighboring rights [10]. The neighboring rights approach can eliminate the need for the author's identity as a natural person and the necessity for copyright law to promote creativity [11].

Indeed, the relationship between the user and the AI generated content is not as directly decisive in the sense of creation as that between the author and the work. However, looking at the whole process, there is a unique connection between the user's instructions and the generated content. This correspondence, as a close correlation, plays a decisive role in a practical sense. The user is the one who ultimately determines the presentation of the generated content [12]. The subject of neighboring rights for AI generated works should be the user [13]. Whether the user is an individual natural person, an employee, or subject to a contractual agreement will affect the ownership of rights. If copyright protection is granted to AI generated works, tracing the probable source of "originality" would lead to the AI provider or program designer, because the provider or designer has written, trained, and created the generating program.

In such instances, the AI provider or program designer should be the subject of rights [14], since the user merely commands the program to work on specific instructions. Although it may be argued that the investors, developers, managers, owners, and data providers ensure the feasibility

of the generated works feasible, the reality is far more complex. It is the user who transforms the AI generated works into reality. The Copyright, Designs and Patents Act of 1988 in the UK stipulates that the author of a computer-generated work is "by whom the arrangements necessary for the creation of the work are undertaken", which reflects this decisive role in a practical sense.^⑤ Thus, the presentation of AI-generated works is strongly linked to the user's instructions but does not require direct inputs from the user.. At this time, the AI program is more like a "container" that holds numerous potential generated works.

Given the above discussion, the act of an AI user using AI to generate specific products should be more appropriately characterized as a dissemination act rather than a creative act. The determination of the subject of rights should be approached from the relationship between the object and the subject. The instructions given by AI users cannot exceed the existing settings of the AI program. In each of the cases presented in this paper, the parties involved are, at best, merely selecting the picture that best suits their own aesthetic sense from a selection of potential pictures, which they are essentially unable to create based on their own ideas. Although they can fully control what the AI program does, they have no control over how the AI program does it. It is a completely new issue if AI develops to generate specific content without relying on the previous work [15]. This is similar to the process of recording and videotaping the sounds or landscapes of nature, which involves selection, extraction, fixation, and dissemination. Naturally, the sounds or landscapes of nature are not works in the sense of copyright law. Once fixed into products, they acquire dissemination value. Before being transformed into products, if people want to listen to the sounds of birds or waves or view scenic spots, they must be in the appropriate location. The emergence of audio and video recordings has therefore provided convenience.

The Feilin Case (Beijing Film Law Firm v. Beijing Baidu Netcom Technology Co., Ltd) of the Beijing Internet Court in 2019 reflects the above line of reasoning. The judgment

held that works should be created by natural persons, an argument similar to that in the American Taylor case. However, it was determined that the text content generated by artificial intelligence "possesses dissemination value", "the software users have made investments through paid use", and "have the motivation and expectation for further use and dissemination. Therefore, the use and dissemination behaviors of software users should be encouraged, and the relevant rights and interests should be granted to them." Users can indicate in a reasonable manner on the generated products that they enjoy the relevant rights and interests.

In addition, "the software developers (owners) can obtain returns on their investments by charging software usage fees, and they lack the motivation to disseminate the results. Therefore, they should not be granted the corresponding rights and interests."^⑥ The determination of the dissemination value of AI-generated works in this case can be regarded as accurate, and it also indirectly acknowledges the identity of the users as the main body of dissemination. However, the judgment in the Dreamwriter case evaded the determination of the rights of the R & D personnel, holding that "whether there is a direct connection between the relevant work of the software R & D personnel and the originality of the article involved in the case... is immaterial."^⑦ Comparatively speaking, the analysis in the Feilin Case is more comprehensive and thorough.

Academics like Weimin describe the personality of AI from the perspective of a fictitious personality, with a legal person as the most typical example [16]. However, awarding AI with legal subjectivity is of no help to the implementation of legal liabilities [17]. AI lacks the will-forming body that legal entities or unincorporated organizations possess. This will-forming body consists of natural persons, regardless of whether they are singular or plural. Therefore, it cannot possess the two "most important qualities required for creation", namely will and emotion. It cannot "borrow" the "shell" of a legal person to become a subject of rights. Moreover, since AI itself does not possess independent property like a legal person, if AI is identified as the subject of rights, the infringed party will be faced with a situation

⑤ In Clause 3 of Section 9 of the Copyright, Designs and Patents Act 1988 in the UK, which states that "In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.", it would be more appropriate to currently understand "the person by whom the arrangements necessary for the creation of the work are undertaken" as

the user of artificial intelligence.

⑥ Feilin Case (Beijing Film Law Firm v. Beijing Baidu Netcom Technology Co., Ltd).

⑦ Dreamwriter Case (Shenzhen Tencent Computer System Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd).

where it is impossible to obtain compensation [18].

Several scholars (such as Wu Handong), believe copyright issues related to AI may involve regulations on works produced during employment or commissioned projects, as well as more general issues with regards to the works generated by AI as opposed to those of legal persons. These perspectives are further reflected in cases. In the Taylor case, Taylor admitted that the creator was AI but believed that the generated work should be registered as a commissioned work under the name of the owner (that is, Taylor). The judgment in the Dreamwriter case held a similar view: "The article involved in the case was presided over by the plaintiff, created on behalf of the plaintiff's will, and the plaintiff was responsible for it. It is a work of a legal person." The concept of a fictional personality is akin to the objective assessment of originality in works. Both aim to break through the basic logical starting point that natural persons are the true creators of works and to clarify the potential status of AI in copyright law. It could be argued that recognizing the authorship status of AI in reality facilitates the human-centered view of the author.

The reasoning for this is that the clarification of the creative subject of AI is beneficial in developing the public's understanding of the specific creative methods [19]. However, looking at the existing subjects of neighboring rights, performers are natural persons. Producers of audio and video recordings include organizations and individuals. Broadcasting organizations are mainly organizational entities, which can be legal persons, unincorporated organizations or natural persons, without any restrictions or the need for fictionalization. Regarding the right holders of the products generated by AI, whether they are individual users or investors, developers, owners or managers in the form of legal persons or unincorporated organizations, there is no need to break through the basic principle that works must be created by natural persons.

There are also views that AI programs are just tools for users to create works [20]. However, users do not have "predictability" regarding the final state of the generated content. AI has therefore surpassed the functions of tools in the general sense. In the case of copyright registration for the comic book "Zarya of the Dawn" handled by the US Copyright Office in February 2023, the US Copyright Office denied the copyrightability of the pictures generated by AI in the book. In the reply to the parties involved, it was

pointed out that during the process of AI executing instructions, namely the process of matching, selecting, and finally integrating instructions and data, the user did not substantially participate. It was thereby argued that there is a "distant gap" between the user's instructions and the generated content.

Furthermore, AI programs are fundamentally different from graphic tools like PHOTOSHOP that can directly reflect the author's intentions. Therefore, it is not recognized that the user of AI can be identified as the author in the sense of copyright law.^⑧ This line of reasoning is a further significant dismissal of the tool theory. However, China's copyright registration regulations have not yet required applicants to declare whether the works are generated by AI. The fact that the plaintiff in the case of (Lin v. Gauss Gas Film Technology Co., Ltd.) obtained a copyright registration certificate is the best illustration of this. Both the tool theory and its opposition are not relevant or necessary when identifying the subjects of neighboring rights. There are distinctions between how the subjects of neighboring rights select and determine their objects, and the critical role that the author plays in the creation of a work. For example, a producer of sound recordings selects a specific bird song to record. What he does to the bird song is only selection rather than creation, that is, the relationship between the subject and the object of neighboring rights does not necessarily require a direct decisive relationship such as that required between the author and the work.

The German Copyright Law contains typical provisions that differentiate between photographic works and ordinary photographs, as well as between film works and moving images. These distinctions reflect the unique aspects of the machine production process. If no individual creative labor is added, such as the design of artistic photos (corresponding to photographic works), film stills, plot arrangements (corresponding to film works), etc., the individual only selects the corresponding objective scenes and then has them fixed by the machine without adding any original content of natural persons. Upon revisiting the products generated by AI, it is clear that all of these products are both potentially and definitively existent. The reason for this is that the user's inputs correspond to the predefined content established by the program. The users cannot add personalized expressions like the design of artistic photos or the stills and plot arrangements of films. The products gener-

⑧ Copyright Office, Re: Zarya of the Dawn (Registration #

VAu001480196), p. 8-9.

ated by AI are always similar to ordinary photos and general moving images, which are simply a direct reproduction of the objects. Broadcasting organizations have specific rights regarding the signals they transmit. They are not allowed to take an active role in the production of these signals. Instead, their role is limited to deciding what type of program information to include. It is important to note that the focus of the broadcasting organizations' rights is on the signals themselves, rather than on the programs being broadcast.

The particularity of AI programs also lies in the fact that any other person operating on the same program based on the same instructions can obtain the same or substantially similar generated works. However, this does not prevent the prior user from enjoying neighboring rights over the corresponding generated works. To illustrate by analogy, even at the copyright level, different people who respectively create the same or substantially similar works, such as taking the same or substantially similar photos from the same angle using the same camera, can each enjoy copyright. When looking at it through the lens of neighboring rights, different performers performing the same work, or different producers of audio and video recordings recording the same object, can also each enjoy neighboring rights. The neighboring rights of AI generated works should be held in a similar regard. If others do not want to use the existing generated works, they can also generate corresponding generated works through the same, similar or completely different instructions and enjoy neighboring rights.

To address potential confusion with human-created works, watermarks or other markings can be established through automatic or manual naming. Such an approach would ultimately ensure the "stable order and trust relationship in the creative works market". The judgment of the "Spring Breeze Picture Case" affirmed the act of identifying the AI generated attributes of the pictures involved in the case. This also complies with the content regarding identification requirements in China's "Regulations on the Administration of Deep Synthesis of Internet Information Services" (which came into effect on January 10, 2023).

4 Analysis of the Suitability of the Content of the Neighboring Rights

The strength of the protection awarded from neighboring

rights is generally weaker than that of copyright, and however given neighboring rights can also prevent overprotection and the negative effects of broad exclusive rights and lengthy protection periods [21]. The Rome Convention states that the protection period granted under this Convention must last for at least twenty years, calculated from the end of the year in which it applies.. Each country has autonomy to determine the duration of the protection period for neighboring rights, but most countries tend to refer to international treaties and implement a much shorter term of protection compared to that of copyright. For example, Spain and Italy stipulate that the term of protection for photographs that do not constitute works is 25 years and 20 years respectively.

The longest duration of protection for all types of neighboring rights begins from the date the object of those rights is created or the date of its first public communication. This duration is significantly shorter than the protection period for works created by natural persons, which lasts for 70 years after the author's lifetime and death.. However, there are some neighboring rights that have a shorter term of protection, such as 10 years for layout design rights in China and 5 years for stage set design in Italy. In 2019, the Directive on Copyright in the Digital Single Market was adopted by the European Union, which stated that the term of protection for neighboring rights of press publishers is 2 years, starting on January 1st of the year following the publication. In terms of the scope of rights granted, neighboring rights offer fewer exclusive rights than copyrights. For instance, compared with audiovisual works, the rights of video producers in China do not include the right of screening, adaptation, publication, etc. In addition, the proportion of neighboring rights that provide for statutory remuneration is far more extensive, whilst copyright is only applicable to ex post facto remuneration in specific circumstances such as statutory permission, whereas certain powers of neighboring rights are generally applicable to ex post remuneration.

The reason for the above phenomenon is that neighboring rights should always revolve around and serve the creation and dissemination of works. Some neighboring rights objects embody a certain degree of originality, but the originality of the communicator for the neighboring rights objects is always based on the original work. Although there may be innovations in certain aspects, such as the recording of storytelling for novels, of course, there are special arrangements for oral expression of storytelling and thus have a certain degree of novelty, but it is always based on

the original work of the novel. The original definition of Chinese video is the first mechanical recording of a work, performance or natural scene, and the originality of a mechanical recording based on things existing in nature cannot be compared with that of a work. The term of protection of neighboring rights is often shorter, which is measured by economic value, in comparison copyright has a stronger personal quality, which is generally more important than neighboring rights in the nature of rights, and it is reasonable to grant a longer term of protection to copyright. The communicator's input requires a specific period for returns, but it holds a more subordinate role in the creation and dissemination of culture compared to the author's original creation. Consequently, the law designates a shorter period for economic returns on the communicator's contributions. At the same time, it is also to encourage the communicator to continue to disseminate new works after a certain period of time, and if the protection period is set too long, the communicator is likely to stick to some of the best-selling products of works and abandon the content of other works, which is not conducive to the wide dissemination and updating of works.

On the one hand, regardless of how original a work may be, it represents the intellectual effort and energy invested in its creation. Such contributions are valuable for enhancing the spiritual wealth of human society and deserve recognition. On the other hand, the greater protection of works with a high degree of originality also encourages authors to create works with a higher degree of originality, after all, works with a higher degree of originality are more enlightening to human beings and thus more valuable. However, if works with different degrees of originality are equally protected, it is difficult to encourage the creation of works with a high degree of originality. If the protection of AI-generated works is raised to the same level as that of artificial works, this will ultimately result in the protection of works created by natural persons through dimensionality reduction. This approach may discourage creative behavior among individuals and lead them to prefer using AI for generation instead of engaging in direct creation.

With the increasing use of AI generated objects and the reduction of natural person creation, the materials of natural person-created works that use AI to generate new content, may eventually cause “overprotection” and “[t]he tragedy of the anticommons”. The idea embodied in the Spring Breeze Case is oriented towards the same protection of AI-generated works and artificial works, which has a greater risk and may lead to the transformation of copyright

from protecting “creation” to protecting “result”. There is an additional perspective that special rights should be protected for AI products to which users have contributed, and in turn that fully automatically generated content should be characterized as a public good [22]. However, the problem is that there is no user participation in the operation of the AI program, and if the user's contributions, so this distinction is not feasible at present.

The neighboring right is based on the premise that the copyright of the work is not affected. Article 1 of the Rome Convention states that “[p]rotection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Convention may be interpreted as prejudicing such protection.” Moreover, the Rome Convention also limits that only the member states that have accession to the Berne Convention or the Universal Copyright Convention can join so as not to cause the protection intensity of the neighboring rights of a country to be greater than the consequences of copyright.

The establishment of the receiving right shall not hinder the continuation of the transmission, that is, the neighboring right owner shall not hinder the prior copyright, nor shall it hinder the subsequent act of transmission and creation. For example, actors cannot enjoy the right to the content of the performance as ordinary performers. The important reason is that if all actors enjoy the complete right to be performers, it will directly affect the dissemination of movies and TV dramas, and will fundamentally affect the investment income and willingness of filmmakers. The dissemination of certain works may sometimes take precedence over copyright protections. Nevertheless, even the copyright owners cannot unjustly prevent the dissemination of works that are already available. They, in turn, should not engage in discriminatory practices, such as requiring permission for performances or recordings of existing works. This serves as a limitation on the rights of copyright owners and aims to promote fair dissemination of creative works.

In the form of power, the right of neighbor can be reflected as the legal or agreed right of remuneration, such as the right of remuneration for the dissemination of audio recordings, and the actor as the performer does not license the use of the film but enjoys the right to remuneration through the contract. Although the legal remuneration for recording products is similar to that of a legal license, there is a key difference which is that legal permission can grant

exclusive rights. In another sense, legal remuneration allows users the freedom to use the product, as long as they pay for it. Yet, to avoid the risk of infringement, copyright law grants recording producers exclusive rights to performance. Therefore, commercial venues must obtain permission and pay for usage. Even copyright law does not stipulate the right to reward the recorded performers, so the user does not need to obtain the performer's permission or pay remuneration to the performer.

The concept of the rights associated with AI-generated content can be linked to the legal principle of remuneration. In other words, the principles governing AI generation should emphasize fair remuneration rights, allowing for minimal exclusivity. Additionally, the distinction between commercial and non-commercial use could help define these rights, suggesting that the protection period should be relatively short. Some scholars propose that the scope of copyright infringement should be expanded to include instances of AI generation. This approach suggests that artificial works and artificial intelligence generation should be equally protected, and put people and machines at the same level, and eventually alienate people under the control of AI. The practice of setting the legal right of remuneration for the neighboring right of AI generation will effectively prevent the public from directly breaking the law, and at most establish indirect infringement, which will not be criminalized, which is favorable to the protection of the public.

When looking at the right of authorship, the Feilin case suggests that computer software developers, owners, and users shall not be assigned as the author, but the neighbor should have the right to identify the right of identity, can be called to show the right of identity, or through the way of rights management information. In addition, the neighbor of AI generation also needs to be limited by reasonable use and legal permission, in order to ensure further creation and spread. An additional point put forward is that there should be rational usage of AI generation of the boundary should be widened, in order to eliminate the use of non-profit behavior constitute the possibility of infringement. This broadening may help maintain the scope of the public space, and have similarities with the Creative Commons and the idea of sharing the licensing mechanism, which helps to build a common treasure of knowledge. In summary, it is evident that the neighboring rights of both communicators and authors of less original works emphasize the importance of the work and its creator. This means that the protection offered is limited, but it still acknowledges

and respects the originality of works as defined by copyright law.

5 Necessity and Feasibility Analysis

Logical fit does not mean that the value is certain. In addition to demonstrating that the power of AI generation and neighboring rights is logically consistent, it also needs to seek value support. For the intellectual property protection of AI, its software program can be protected through copyright, and its technical scheme may be protected by patent rights. Huibin and Shilei believe that the copyright protection of AI products can stimulate scientific and technological innovation and industry development, but it is challenging to support this argument with both factual evidence and logical reasoning. For instance, since Taylor applied for the copyright of AI-generated images in 2018, the US Copyright Office and courts have always been negative about the copyright of AI products, but it has not affected the research and development and progress of AI. Among them, the typical ChatGPT application software has developed from 1.0 to 4.0, and the number of users has exceeded 100 million in two months.

It is clear that certain forms of intellectual property protection can significantly impact various aspects of AI. Additionally, there is no obvious direct relationship between whether a product is granted copyright protection and the overall development of the industry [23]. The AI industry, along with search engines and social tools, is poised to reap substantial benefits in the era of the traffic economy. For instance, the slogan for ChatGPT highlights it as "2023's most popular plug-in on Google." Additionally, China's Baidu plans to release version 4.0 of its Wenxin Yiyuan software under a payment model, while version 3.5 will still be available for free trial. Currently, the lack of adequate protection AI is beginning to have a noticeable negative impact on the industry.

In the absence of approval, the use of AI for creative purposes has become widespread. For example, Microsoft released an AI program called "Xiaoice" that generates poetry, and Google's DeepDream has produced paintings that have successfully been auctioned. Additionally, in the Dreamwriter case, the plaintiff, Tencent, has used AI to write a large number of manuscripts. China's judicial system has started to incorporate AI in an effort to protect copyright and transmission rights. However, when looking at the development of the AI industry in other countries, it cannot be concluded that China's judicial protection of AI-

generated content has significantly promoted the growth of its local AI industry. The development of the AI sector should instead align with global trends. The current AI differs significantly from the performing arts, video recording, and broadcasting industries, which often rely on collaboration and external support to thrive. Without this external backing, related industries may struggle to develop and remain profitable.

In contrast, the artificial intelligence industry has made substantial progress even without the need for copyright protections or collaboration from neighboring sectors. Therefore, the presiding judge of the Spring Breeze case said in an interview after the case that the judgment considered the impact on the emerging industries,^⑨ and objectively took into account the tension between the lag of the law and the demand of industrial development [24]. However, the judge noted that the decision may have overestimated the impact of the copyright protection of AI products in the AI industry.

International and domestic intellectual property laws are racing to catch up with the latest science and technology [25]. However, whether the copyright or neighboring right protection of AI products is likely to have a considerable impact on the work market, "we need to find a balance between legal regulation and technological development". Bo suggests that the essence of AI generation is calculation and imitation, not intellectual labor, and should be attributed to the public sector, so as to form effective economic and social benefits [26].

Similarly, some argue that copyright protection for AI-generated content will encourage users to produce more publicly available content, thereby improving overall societal welfare [27]. Nevertheless, the emergence of AI capable of producing works that closely resemble those created by humans may lead to a decrease in demand for paid creative work. As a result, this could cause an increase in AI-generated content, which may impact the enforcement of authors' proprietary rights. Ultimately, this situation could undermine the creative enthusiasm of human authors.

However, if an AI generator is protected by neighboring

rights, it can create a distinct relationship with copyright works. Different users may then choose either works or AI-generated products based on their specific needs. This approach helps prevent the complete replacement of creations made by individuals when AI products are made freely available to the public.. Additionally, the protection period for neighboring rights is shorter than that of copyright. Thereby suggesting that AI products will enter the public domain after a brief protection period, which may encourage individuals to create their own works.

neighboring rights are similar to copyright but do not have a unified definition in the same way that copyright and its related works do. The concepts of neighboring rights and their objects are not clearly defined or universally accepted. Instead, their definitions exist primarily in theoretical discussions, serving as a summary of international treaties and national legislation. Given this in order ensure that AI generation provides adequate protection for neighboring rights, it is necessary to establish various separate legislations for these rights, similar to earlier practices. Generally, this process should follow the procedure of transforming international treaties into domestic law. Consequently, some perspectives suggest that unfair competition law could serve as a "transitional safeguard measure."

In the Feilin case, it was determined that the transmission interests of AI products are generally reasonable regarding specific neighboring rights. However, if there are no limits on neighboring rights, it could lead to indefinite protection of the transmission value. This would provide a level of protection that exceeds that of copyright, which would be considered illegal. If the anti-unfair competition law with the help of behavior regulation, there is a lack of competition context and it is difficult to apply. Therefore, the judgment of the Feilin case was stated that "[t]he current legal rights protection system can already give full protection to the intellectual and economic investment of such software, so it is not appropriate to break through to the basic norms of the subject of civil law" has a correct logic, but there is no corresponding rights as specified in the "current law".

⑨ The trial judge believed that the scene presented in this case showed that there is selection and arrangement space for AI and the possibility of copyright in AIGC. In this case, give AI users the right, let the content flow, license, generate revenue. Users are willing to use AI, and the developers also have profits, and increase the investment in research and development to form a business chain. The whole world is competing for this track. AI governance should help

the industry to stabilize market expectations and create a business environment conducive to the application of technology and industrial development. See *Interview with Judge Zhu Ge on the Three Focal Points of AIGC Copyright in the 'First AI-Generated Text-to-Image Case'*, <https://baijiahao.baidu.com/s?id=1786331010789549324&wfr=spider&for=pc>, last accessed on November 27, 2024.

The Spring Breeze case judgment highlights the revisions made to copyright law in 2020 regarding the protection of works generated by AI. This alteration can be interpreted as a flexible approach to protecting the neighboring rights of AI-generated content. Specifically, it allows for the transmission of value in situations where there are no corresponding regulations for neighboring rights during the copyright protection period. This approach is more cautious and reasonable, avoiding the direct confirmation of indefinite interests. Additionally, the case can be understood as a well-developed argument for the necessity of creating a new type of neighboring right in the future, particularly for works generated by AI [28]. Yet, the current definition of "work" has an open interpretation that is detrimental to the neighboring rights of the defined object. If the current definition of "work" remains open, it could pose a significant threat to the public domain.

Article 99 of the Ethical Impact Assessment: A Tool of the Recommendation on the Ethics of Artificial Intelligence advocates that member states should promote research at the intersection of AI and intellectual property. This involves two main areas: first, investigating how to provide intellectual property protection for AI-generated content; and second, assessing how artificial intelligence technology can be used in programs related to intellectual property rights and interests.. The rights associated with AI generation need to consider the distribution and balance of interests among various stakeholders. AI programs often rely on existing literature, art, and scientific works as their data sources.

If AI-generated content is granted neighboring rights, it raises a serious and practical challenge: how to protect the prior copyright and legitimate neighboring rights of the original creators. Especially with the development of the algorithms and the integration ability of AI, AI generation may differ substantially similar with previous works, this situation will conceal the use of existing works [29]. If there is no regulation, we can anticipate that copyright and related rights will be generated by AI, due to its reliance on prior works and its ability to generate new content, identifying fair use will no longer be viable [30].

Some argue that digital technology not only separates

creation and production, but also makes the cost of replication far less than the cost of creation. It has thereby been argued that "the production and sales costs must be artificially increased by strengthening copyright rights to maintain the stimulus to creation". So, this suggests that it is necessary to consider the protection of the rights and interests of existing works at least at the same time. The reason this protection is necessary is due to the potential imbalance between the interests of AI users, copyright owners, users and other subjects.

Such efforts of protection were recently attempted under the Artificial Intelligence Act (The AI Act) passed by the European Parliament, which has proposed new transparency requirements for generative AI tools. It highlights that with regards to the obligations of the base model provider "it is adequate that providers of such models draw up and make publicly available a sufficiently detailed summary of the content used for training the general-purpose AI model" which also provides for the possible implementation of copyright licensing and remuneration thereafter. In July 2023, the Writers Association of America addressed the major AI companies, including OpenAI, Alphabet, Meta, Stability AI, IBM and Microsoft in a letter signed by more than 15000 writers and their supporters, highlighting that generative AI in the use of copyright materials should be licensed,^⑩ such actions exposed the urgency of prior copyright and neighboring rights. However, it is difficult to license such a huge amount of data used in AI, and the path of combining legal remuneration with collective management may be more efficient and feasible.

6 Conclusion

In view of the potentially catastrophic risk that AI poses to humans, the Bletchley Declaration reached at the first Global Artificial Intelligence Security Summit on the 1st of November 2023, advocates for prioritizing individuals within society in order to promote the responsible development and application of AI worldwide. Copyright laws were primarily drafted in the 20th century, at this time AI was not active in creating the author's work, given the significant advancements in artificial intelligence, copyright

^⑩ The Authors Guild appeals to the leaders of the AI industry to address these concerns and take the following actions: 1. Obtain permission for the use of copyrighted material in generative AI programs; 2. Fairly compensate writers for both past and ongoing use of their works in generative AI programs; 3. Fairly compensate writers for

the use of their works in AI output, regardless of whether the outputs infringe upon current laws. <https://authorsguild.org/news/thousands-sign-authors-guild-letter-calling-on-ai-industry-leaders-to-protect-writers/>, last accessed on 27 November 2024.

systems must be actively updated to reflect current realities. Nonetheless, the importance of the work and its natural authors should still be upheld to protect the functionality, interests, and value of copyright. The vision of the future of AI is the perfect unity of a high level of human control and a high level of automation, since after all, "[t]here might be artificial intelligence, but there is no artificial creativity" [31]. There are significant differences between the processes of AI generation and traditional creation. To protect the interests of authors and their works while utilizing AI-generated content, it is advisable to implement a system of neighboring rights. This approach allows for the protection of authorship without needing to overhaul the existing copyright framework. These neighboring rights could offer a lower intensity and shorter duration of protection compared to copyright, thereby establishing a distinct protection model for different types of works. The protection of the neighboring rights related to AI generation must be grounded in legal principles and should adhere to both international treaties and domestic laws. The effectiveness of specific legal protections for these neighboring rights in the context of AI generation is yet to be tested by time and factual developments.

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