



Research on the Rationality of Creative Behavior Rules in the Field of Artificial Intelligence in Copyright Law

Zheng Gong

Chongqing Normal University (CQNU) , Chongqing, 400030, China

E-mail: 1399409500@qq.com

Abstract: As one of the three cutting-edge technologies of the 21st century, “artificial intelligence”, its high-speed development trend has further revealed the fact that today’s law in our country has a relatively serious lag ^[1], and the research needs to have a certain forward-looking requirement. The artificial intelligence products discussed in this article are named using the “artificial intelligence creations” ^[2] proposed by scholar Yi Jiming, combined with relevant domestic and foreign cases, discuss the copyrightability of artificial intelligence creations from the perspective of originality and intellectual achievement, and further clarify The subject of its rights and the ownership of rights, exploring the balance between technological development, maintaining legal order, and promoting economic development, Hope to promote the applicability of the creative behavior rules in copyright in the field of artificial intelligence, and provide help for the revision and improvement of laws and regulations in the future.

Keyword: Artificial intelligence, artificial intelligence creations, copyright, neighboring rights, ownership of rights.

1. Introduction

Nowadays, the object types of artificial intelligence creations cover music, art, literature, etc. The emergence of these artificial intelligence creations is accompanied by a series of related legal issues, which require countries around the world to adapt to the development of new technologies through legislative adjustments . With the emergence of the first domestic copyright dispute case of artificial intelligence creations, the copyright issue of artificial intelligence creations has begun to enter the field of judicial practice. As a practical discipline, law must actively pay attention to and respond to emerging social issues. The relevant legislation of our country is adjusted. This article will combine relevant domestic and foreign cases to analyze the copyrightability of artificial intelligence creations from the perspective of the attributes and originality of intellectual achievements, explain the rationality of taking natural persons as the subject of rights, and further clarify the subject of rights and the subject of artificial intelligence creations. Ownership of rights, exploring the balance between technological development, maintaining legal order, and promoting economic development, Hope to promote the applicability of the creative behavior rules in copyright in the field of artificial intelligence, and provide help for the revision and improvement of laws and regulations in the future.

2. Controversy over the copyrightability of artificial intelligence creations

2.1 Judgment of Works by my country’s Copyright Law

Intellectual activities that directly produce literary, artistic, and scientific works are called creations in copyright law. Providing advice, material conditions or other auxiliary work to others cannot constitute “creation” in the copyright law. The works here refer to intellectual achievements that are original and can be copied in a specific form in the fields of literature, art, and science. ^[3] It puts forward certain requirements for whether things can be called works and protected

Copyright © 2020 Zheng Gong

doi: 10.18282/le.v9i8.1954

This is an open-access article distributed under the terms of the Creative Commons Attribution Non-Commercial License

(<http://creativecommons.org/licenses/by-nc/4.0/>), which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

by my country's copyright law. Among them, the literary, artistic, and scientific value of artificial intelligence creations has been generally recognized, and whether its originality and intellectual achievements can be recognized by my country. The recognition of copyright law has become a major controversy. This article will ignore the subject of "artificial intelligence" as a prerequisite in the creative process, and discuss whether the expression of his creation can be called a work. ^[4]

2.2 The controversy of artificial intelligence creations as intellectual achievements

Intellectual achievements refer to the spiritual wealth or spiritual products created by people through intellectual work. The accompanying rights are called intellectual achievement rights, also known as intellectual property rights, which are rights enjoyed by intellectual workers in accordance with the law on their achievements. my country's traditional copyright law believes that intellectual achievements require human beings to add personal spiritual will in the creative process. Therefore, some scholars believe that because artificial intelligence does not possess personality and cannot impart any form of spiritual power to creations, it should be excluded from copyright protection. outer. The author here believes that as long as artificial intelligence can use expressions that can be understood by humans to create, make contributions to human society, and reflect human spiritual will to a certain extent, it can constitute intellectual achievements. The standard of expressions understood by humans should be consistent with human works. Refer to the "Anonymous Writers Project" launched in Beijing in 2018. Compared with many participants (such as Yan Lianke, Luo Yijun, Lu Nei, Shuang Xuetao), the award-winning author Zheng Zhi has no reputation. In fact, human will can be reflected in the creative behavior of artificial intelligence. Humans provide intellectual labor in the process of writing artificial intelligence algorithms, which is further reflected in artificial intelligence products. ^[5] The scope of artificial intelligence screening data, determining the criteria for artificial intelligence to extract data, and the process of selecting the final product of artificial intelligence are all carried out on the basis of the subject, theme, and emotion that humans have determined. These design, debugging, and feedback interventions Behavior can reflect human will to a certain extent, such as creative intention, emotional background, and aesthetic orientation.

2.3 Controversy over the originality of artificial intelligence creations

The work should also have a certain degree of originality. Scholars affected by the authorship system here believe that the individual thought and creative expression invested in the author's creation process reflects creativity, so the author's "thought" is protected, here because of artificial intelligence It does not have a distinct and personalized "thought", so it should not be protected. His originality has been denied. Although artificial intelligence does not have a distinct and personalized idea, its creations are not just a pile of data. It can even reflect a certain "thought", the source of which can be interpreted as the programmer's preconceived idea, or abstractly summarize the thought expression of human works in artificial intelligence self-learning, and then express it in a certain way. The author believes that we can refer to the dichotomy of thought and expression in the TRIPS agreement, which only protects the expression of the work, not the pure thought. ^[6] The final work is original as long as it is different from the expression of the existing work. To sum up under the premise of ignoring the subject of artificial intelligence creations, artificial intelligence creations are copyrightable and can be called works. ^[7]

2.4 The irrationality of neighboring rights in protecting artificial intelligence creations

In addition to the copyright law, scholars including Xu Mingyue believe that the neighboring rights can be used to provide legal protection to artificial intelligence creations. ^[8] Neighboring rights mainly refer to the rights of the publisher, the rights of performers, and the rights of video producers. Take the rights of performers as an example. Although different actors are strictly constrained by the script, the effect they present in the same script is different. The actors still have a certain amount of creative work in the process of dissemination of the script. This work is protected by law. If the neighboring right is used for the protection of artificial intelligence creations, the programmer is like a screenwriter. The initial program algorithm input is the script, so it is reasonable for the artificial intelligence to interpret the established program algorithm to be protected by neighboring rights. ^[9] However, three problems will arise here: 1. Use neighboring rights to a certain extent is a denial of the originality of artificial intelligence creations. Its programmers cannot predict the generated content as accurately as scriptwriters. 2. Our country's protection of neighboring rights is

not as strong as copyright, which is not conducive to the incentive to the creative field to a certain extent. 3. The threshold of neighboring rights for works is low, which will cause a large number of works not protected by copyright to flood into the public domain and bring huge pressure to our country's laws.

3. Disputes over determining the subject of rights and ownership of artificial intelligence creations

3.1 Disputes on the status of the subject of artificial intelligence creation

Some artificial intelligence can create completely independently based on the algorithm input by human beings. Through continuous learning in this process, finally create products that can exceed human expectations. Some scholars believe that this kind of artificial intelligence is in "thinking" "The above has already possessed originality. His creative behavior is an intellectual activity, and his creations are indistinguishable from those of natural persons. Artificial intelligence creations should enjoy the status of the subject of rights. But if the machine is the subject of rights and enjoys the copyright of its work, if its work is infringing, it cannot bear the infringement liability like human beings, and finally it needs to find the corresponding natural person. This kind of machine treated as a human can enjoy rights but cannot bear corresponding responsibilities, which violates the principle of equal rights and responsibilities. Even if some countries claim to have granted citizenship to artificial intelligence, such as Saudi Arabia's "Sofia Citizen", this is only an entertaining expression. Subjectivity is a unique attribute of human beings, and having free will is the basis, not just through laws Granting can be achieved. In this way, it is more reasonable to clarify the subject of the rights of the product as a human being. As for the final determination, it should be based on specific analysis of specific issues and attribute him to the programmer, owner or operator. This is also in line with the requirements of my country's copyright law for authors, that is, authors must be natural persons."^[10]

3.2 Clarify the ownership of artificial intelligence creations

There are multiple rights subjects involved in the creation of artificial intelligence, such as artificial intelligence programmers, owners, investors, and operators. Each subject of rights played a vital role in the creation process. It is generally believed that the "thought" of artificial intelligence comes from his programmer or operator, so this article sets these two as priority options. The programmer is regarded as the default owner without the transfer of rights. The operator is the same natural person, so the ownership of rights is not disputed. If the programmer and the operator are not the same natural person, and there is no contract between the two to stipulate the ownership of the artificial intelligence creation, the programmer is considered to be the owner and act Author. In order to take into account the interests of non-creative investors, non-creative investors can be regarded as authors if there are relevant contracts."^[11]

4. Conclusion

At present, the international copyright protection for artificial intelligence creations is generally confusing. China does not have a unified handling standard for such cases in judicial practice. Most of them rely on the method of "specific analysis of specific issues" to solve them, but this cannot be considered As a long-term strategy, China's law needs to clarify the copyright and ownership of the above-mentioned artificial intelligence creations in this article as soon as possible, and make corresponding adjustments to relevant laws to maintain the sanctity of the law, promote economic development and encourage the field of artificial intelligence creation and literature Prosperity in the field of artistic creation.

References

1. Yin D. Three views on legal lag (in Chinese). *Public Administration & Law* 1998; (2): 28–30.
2. Yi J. Are AI creations works (in Chinese)? *Science of Law (Northwest University of Political & Law)* 2017; 35(5): 137–147.
3. Zhang W. Research on the artificial intelligence of judicial adjudication in China [MSc thesis]. Hefei: Anhui University; 2020.

4. Chen Y. Research on copyright protection of artificial intelligence creations [MSc thesis]. Changchun: Northeast Normal University; 2019.
5. He P, Jiang Q. Study on the legal nature of “creation” of artificial intelligence. *Journal of Chongqing University of Technology (Social Science)* 2020; 34(6): 102–110.
6. Agnihotri A. A critical review of the idea/expression dichotomy in copyright law. *Public Affairs and Governance* 2013; 1(2).
7. Liu W. The research on China’s intellectual property border measures—On the background of TRIPS-plus [MSc thesis]. Chengdu: Southwestern University of Finance and Economics; 2019.
8. Xu M, Tan L. On the protection of artificial intelligence creations through neighboring rights: The theoretical justification and institutional arrangement. *Journal of Comparative Law* 2018; (6): 42–54.
9. Wang Z. Research on the protection mode of artificial intelligence generated products neighboring right [MSc thesis]. Guilin: Guangxi Normal University; 2019.
10. Cao Y. Analysis on the legal subject of intelligent robot (in Chinese) [MSc thesis]. Guangzhou: Guangzhou University; 2019.
11. Xiao X. International comparative studies on the copyright of AI-generated content [MSc thesis]. Shanghai: East China University of Political Science and Law; 2019.