

# Research on Neighboring Right Protection Model of Artificial Intelligence Generated Content

Xiang Li\*

Department of law, Shanxi University of Finance and Economics, China

\*Corresponding author: Lixiang040530@163.com

**Abstract.** Through interdisciplinary analysis, this paper analyzes the concepts and principles of AI-generated content from the perspective of computer science, so as to characterize AI-generated content and distinguish it from general human-created works. Through the historical analysis method, the author examines the historical process of AI and recognizes the dilemmas faced under the protection of the current narrow copyright law, so as to try to find a new path of protection outside it. The rights stipulated in China's copyright law include copyright and neighboring rights in the narrow sense, and it can be learned through the method of law and economics analysis that the most fundamental purpose of China's copyright law is to promote the prosperity of the cultural market, therefore, on this basis, it can be argued that the economic value behind the development of the copyright law, to prove the reasonableness of the model of protection of neighboring rights of the AI-generated content, and to push the establishment of the legal protection model of neighboring right of artificial intelligence, and further construct the legal system framework.

**Keywords:** Artificial Intelligence Generated Content; Neighboring Rights Protection; Copyright Law.

## 1. Introduction

At the Dartmouth Summer Conference in the mid-1950s, John McCarthy and others first put forward the concept of "Artificial Intelligent (AI)", which is also known as one of the three most advanced technologies in the world in the 20th century. Subsequently, mankind has conducted a long research and exploration of artificial intelligence.

China has likewise responded positively to the international community, striving to be a leader in the era of artificial intelligence. On July 20, 2017, China's State Council issued the New Generation of Artificial Intelligence Development Plan, stating that it would realize the world's leading level of AI theories and technologies by 2030, establish a new high ground for the global development of AI technology, and strengthen the protection of AI intellectual property rights.[1]

Legal norms, due to their own stability, determine that the length of legislative activity lags behind social development, and the legal protection of AI-generated content fully reflects this feature. Although the legislative task in the field of artificial intelligence in 2019 has been included in China's legislative planning, but to date, the legal protection of artificial intelligence-generated content is still faced with problems such as the lack of law, judicial gaps, and unclear attribution of responsibility. At the same time, under the rapid development of AI, disputes over its generated content continue, and the lack of legislation brings unclear basis for conviction, and the phenomenon of different judgments in the same case poses a greater challenge to China's judicial environment. Therefore, there is an urgent need to clarify the legal attributes and attribution principles of AI-generated content, fill the legal gaps, and settle disputes.

## **2. The Necessity of Copyright Law Protection for Artificial Intelligence Generated Content**

### **2.1. Artificial Intelligence Generated Content**

#### **2.1.1. The Concept of Artificial Intelligence Generated Content**

Artificial intelligence-generated content refers to the use of computer hardware and software equipment as well as neural networks supported by powerful algorithms for in-depth learning and analysis of a large amount of data collected, so as to output according to the laws summarized under the operator's will, to create a specific content required by the operator and not too different from the works that human beings can create.[2] Artificial intelligence generates content with high efficiency and wide coverage, with little distinguishability from human-created works and outstanding property attributes.

#### **2.1.2. Artificial Intelligence Generated Content Belongs to the Scope of Copyright Law Protection**

Neighboring right, also known as the right to disseminate the work, refers to the exclusive right that the disseminator of the work enjoys in accordance with the law on the fruits of labor generated in the process of disseminating the work. Therefore, the establishment of neighboring rights is for the effective dissemination and utilization of works, constructing a system of information production and dissemination, and this interest balancing mechanism encourages the dissemination of creative achievements. The intellectual labor produced by AI-generated content is all about inheriting and drawing on the wisdom and experience of previous generations so as to satisfy the reasonable needs of the public, in which the data already in the database is an important support for its content generation, and the output of new results is a kind of dissemination of the original data and intellectual labor. The fundamental goal of copyright law is to promote the creation and dissemination of excellent intellectual achievements, so as to enable the creators to obtain economic benefits, and then reverse incentives for their creative enthusiasm. In the whole chain of AI-generated content generation, the right holder has invested labor and funds, but because the AI-generated content lacks personality elements and cannot be included in the scope of protection of copyright in the narrow sense, which will make the results of the intellectual property rights environment in which the AI-generated content is located more likely to be infringed upon, and the rights of the right holders will not be guaranteed. Therefore, based on the need for the dissemination and utilization of generated content, as well as the development prospects of the AI industry, it is of great significance to incorporate AI-generated content into the scope of protection of neighboring rights, which is a significant development of China's copyright law in the era of artificial intelligence.

### **2.2. The Need for Copyright Law Protection for Artificial Intelligence Generated Content**

#### **2.2.1. Stabilize the market economy**

The economic base determines the superstructure, and the superstructure will in turn react to the economic base. In the era of the deep integration of artificial intelligence and traditional industries, the increasing investment in the market for AI-generated content is changing the supply and demand pattern and production relations of the original market, thus requiring the establishment of a new superstructure.

#### **2.2.2. Sound Copyright Law System**

China's corresponding legal norms have not kept up with the rapid development of artificial intelligence. The consequences of the lack of legal norms are unimaginable. Because it is difficult to distinguish between AI-generated content and human-created works, coupled with the absence of infringement and accountability, this will lead to confusion in the determination of the subject of the rights of works, plagiarism, further weakening the creativity of the creators of creativity, and discouragement of the investment of AI investors, resulting in the decline of the market for human works and the development of the AI industry.

### **3. The Dilemma of Narrow Copyright Protection Mode of Artificial Intelligence Generated Content**

#### **3.1. Object Dilemma**

According to the existing legal provisions, we can summarize the three major substantive elements under the definition of works in China's narrow copyright law as follows: firstly, belonging to the fields of literature, art and science; secondly, having "originality"; and thirdly, "intellectual achievements" based on the creation of works. The third is the "intellectual result" of the underlying creation.[3] The AI-generated content has a high degree of similarity in appearance to human-created works. Therefore, whether AI-generated content can meet the requirements of the object under the narrow copyright law also needs to satisfy the two constitutive elements of "originality" and "intellectual achievements".

##### **3.1.1. The Negative of the Constituent Element of "Originality"**

First, from the perspective of the generation process of AI-generated content, AI-generated content does not have "innovative thinking". The principle of AI generation is based on a large number of former creations and public information, data collection and data mining through crawler protocols, then creating a reasonable and appropriate big data algorithmic model through the user's different purposes of mining the data, analyzing the data, summarizing the corresponding laws and commonalities. Therefore, artificial intelligence is just an advanced data matching and algorithmic prediction model, and its content generation process is just a data processing process, which lacks innovativeness and generates content without "originality".

Secondly, from the perspective of the results of AI-generated content, it is impossible to define whether the results contain the "personalized choices" of the AI that generated them. "Artificial intelligence" can never be separated from its machine nature, we can not judge the artificial intelligence generated in its generation process whether the "personalized choice", but also can not determine in the generation process, the artificial intelligence whether there is a "free choice space". "free choice space" in the generation process. Therefore, it is difficult to determine that the result of AI-generated content is the product of "personalized choice", and the generated content does not have "originality".

##### **3.1.2. Negation of the constituent elements of "intellectual achievements".**

According to the relevant provisions of China's copyright law, the copyright law system stipulates that "creation" refers to the "direct generation of intellectual fruits" of intellectual activity, and other auxiliary creators to carry out creative activities are excluded from the scope of legal protection.[4] Each step and stage of content generation by AI is a product of the "black box" attributes of its intelligent system, without the participation of research designers in their own intellectual activities. This "indirect generation of works" behavior does not have a decisive factor in the concept of the work to be expressed, and need to further use the actor's choice to determine the core content of the expression.[5] Whether algorithms, models and rules become intellectual achievements is not related to whether the process of applying algorithms, models and rules belongs to intellectual creation, and whether the result becomes a work."[6]

#### **3.2. Subject Dilemma**

Artificial intelligence-generated content is difficult to find a suitable right subject within the provisions of the narrow copyright law. Artificial intelligence has no autonomous consciousness, can't exercise the rights and obligations like general natural person, need to have the corresponding agent to exercise the rights and obligations on its behalf. Whether the agent should be the designer, investor or user of the AI is another issue that needs to be explained. If artificial intelligence is given the status of a subject, so that artificial intelligence becomes the subject of exercising rights and assuming obligations, this will cause a subversive and significant blow to the civil law system of China, which

is based on the jurisprudence of "subject-object dichotomy", and can produce far-reaching and unpredictable risks in social governance.[7]

#### **4. Reasonableness of the Neighboring Right Protection Mode of Artificial Intelligence Generated Contents**

##### **4.1. Consistent with the value orientation of the neighboring right system**

###### **4.1.1. Principle of Efficiency**

Neighboring rights protect the recording, broadcasting, performing and other intellectual achievements related to the work, which are not scarce in nature, only that the neighboring rights protect them through the limitation of the right threshold, and artificially endow them with the relevant scarcity, and further encourage the creators to vigorously invest in the creation and dissemination of the work through the benefit orientation to stimulate the vitality of the cultural market. The biggest feature of artificial intelligence-generated content is the high efficiency and low cost of creation.

###### **4.1.2. Principle of Equity**

The neighboring rights system protects a large number of intangible labor results that do not constitute works, and actually creates a new system of rights protection outside the traditional narrow copyright law system. Intellectual labor under the system of neighboring rights needs to inherit and draw on the intellectual achievements of previous generations, and the content generated by artificial intelligence fits this characteristic to a great extent, and the huge public data system is an important support for its operation and content generation. Therefore, the protection of neighboring rights for AI-generated content is actually the protection of existing intellectual achievements, and the effective distribution of benefits for the labor in the process of its dissemination.

##### **4.2. Balance of Interests in Fitting the Neighboring Rights System**

Balance of interests is an important purpose pursued by the right, and is also an important principle in intellectual property law, which permeates the provisions of intellectual property law and also applies to the relevant provisions of copyright law.

Artificial intelligence-generated content has the characteristics of high efficiency and low cost, if all of them are classified into the scope of protection of the narrow copyright law, it will greatly squeeze the living space of general creators, reduce the creators' enthusiasm for creation, and then weaken the creative thinking of human beings. However, it is also undesirable to classify them as purely in the public domain. This completely negates the commercial value of AI-generated content at the legal level, not only losing fairness to the laborers who have contributed to the generation of content, but also dampening the enthusiasm of investors. Since AI-generated content and its commercial exploitation value is a reasonable and widespread phenomenon, a third approach should be chosen to achieve a balance between recognizing the value of AI-generated content at the legal level and safeguarding the interests of rights holders from infringement under traditional copyright law.[8]

The threshold of protection established by neighboring rights is lower, and the division of rights and the duration of protection are far lower than that of the relevant provisions of copyright in the narrow sense. By including AI-generated content in the scope of protection of neighboring rights, we closely match the principle of balance of interests, which not only recognizes the value of AI-generated content at the legal level, protects the interests of all parties, and guarantees the development of this industry, but also restricts the ability of AI-generated content to not occupy the space of existence and benefits of general creators. It can recognize the value of AI-generated content at the legal level, protect the interests of all parties, safeguard the development of the industry, and limit its inability to encroach on the living space and benefits of ordinary creators.

## **5. Reasonableness of the Neighboring Right Protection Mode of Artificial Intelligence Generated Contents**

### **5.1. Design of Rights Content**

#### **5.1.1. Artificial Intelligence Attribution Right**

In the author's opinion, artificial intelligence should be given the "right of authorship", but the "right of authorship" should be differentiated from the right of authorship stipulated in the general copyright. The reasons are as follows:

Firstly, since it is given a limited legal personality, it should not remain at the theoretical level, but should be given certain spiritual rights at the legal level, which is the real affirmation of its legal status, and is in line with the most basic legal logic and legislative system.

Secondly, in the copyright system, the significance of the existence of the right of authorship lies in the protection of the creator's achievements are not infringed upon, and the coercive constraints on plagiarism and plagiarism. Therefore, giving AI the right of authorship is to maintain the dignity of the law, implement the principle of honesty and trust, and stabilize the intellectual property market, and is not really giving it substantive civil rights.

#### **5.1.2. Artificial Intelligence Property Rights**

Compared with human-created products, artificial intelligence can produce a huge amount of content in a short period of time. If it is protected by a uniform legal standard, it will greatly increase the judicial burden and cost, and increase the rights disputes. Therefore, in the protection of property rights of artificial intelligence, the standard of identification should be raised, the degree of protection should be lowered, and the types of protection should be reduced.

The author believes that only the content generated by artificial intelligence in the reproduction, distribution, information network dissemination and other centralized basic rights protection.

### **5.2. Definition of the subject of rights**

#### **5.2.1. Principle of right attribution**

The author believes that the attribution of rights to AI-generated content should first be determined by the consultation of the parties, and when the meaning is inconsistent, the subject of rights should be stipulated as the owner of the AI.

When determining the eligible subject of rights under the law, many scholars have proposed the principle of "piercing the corporate veil" has been proposed. Piercing the veil of artificial intelligence can directly find the actual manipulator behind the artificial intelligence, then he is the subject of the rights of that generated content.[9]

#### **5.2.2. Reasonableness of vesting rights in the owner**

From an economic point of view, the AI owner acquires the ownership of the AI by purchasing the AI. Although the investor of the artificial intelligence also invests a lot of money, the copyright law has provided corresponding protection for the rights and interests of the investor. [10] Therefore, the rights of the owner of the artificial intelligence to protect the rights of the owner of the lack of rights, the owner of the investment can not get the corresponding return.

From the perspective of artificial intelligence infringement, under the background of rapid development of artificial intelligence technology, the content generated by artificial intelligence gradually involves all aspects of life, and the occurrence of infringement is also increasing day by day, therefore, determining the bearer of the infringement responsibility for the sustained development of the industry of artificial intelligence-generated content is of great significance. The AI owner has a decisive role in all stages of the generation of AI-generated content. Therefore,

according to the principle of fairness and justice and the principle of unity of rights and obligations, the AI owner is a qualified subject to bear the consequences of infringement.[11]

### **5.3. Definition of the object of rights**

#### **5.3.1. Independence by AI**

The term "independent" refers to the absence of significant human intervention, so the content generated by the AI after its own in-depth learning and thinking belongs to the category of "independent", and if the content creation is completed under the manipulation of human activities, the AI is only used as an auxiliary tool for human beings. If the creation of content is done under the control of human activities, then the AI only acts as an auxiliary tool for human beings, and the content it generates does not belong to the category of "independent".

#### **5.3.2. Certain originality**

In the copyright system, the lack of originality is not necessary to be protected by the law. It is necessary to improve the determination of the originality of AI-generated content to ensure that the share of human works under the protection of the copyright law system is not crowded out, for the following reasons:

First, in terms of protecting interests. The protection of AI-generated content must not be higher than the protection of human works, otherwise it will dampen the enthusiasm and enthusiasm of human creation and compress the development space of human works. Secondly, because the generation of artificial intelligence generated content is characterized by low cost, fast speed and large quantity. If we do not have higher requirements for the creativity of the generated content and raise the standard of the content of neighboring rights protection, it will lead to the proliferation of the number of protected content, which will increase the cost and burden of justice, and is not conducive to the healthy development of the copyright law system.

## **6. Summary**

AI-generated content is not suitable to be protected by the narrow copyright law together with general human works. The author believes that the increasingly expanding neighboring rights system for the protection of AI-generated content is reasonable, and through the definition of the subject of the right, the definition of the object of the right and the content of the right involved in the three major parts of the development of the discussion, with a view to solving the current judicial dilemma in China.

## **Acknowledgements**

The author gratefully acknowledge the guidance from professor Weizhen Zhang.

## **References**

- [1] Notice of the State Council on Issuing the Plan for the Development of the New Generation of Artificial Intelligence (Document No. 35 of 2017 issued by the State Council).
- [2] Shi Zhongzhi. Artificial Intelligence [M]. Mechanical Industry Press, 2016: 10.
- [3] Article 1 and Article 3 of the "Copyright Law of the People's Republic of China" (2020). Article 3 and Article 6 of the "Regulations for the Implementation of the Copyright Law of the People's Republic of China" (2013).
- [4] Article 3 of the "Regulations for the Implementation of the Copyright Law of the People's Republic of China" (2013).
- [5] Wang Qian: "Revisiting the Classification of Content Generated by Artificial Intelligence in the Copyright Law", published in "Political Forum" in the 4th issue of 2023, pages 16-33.
- [6] Wang Qian: "On the Classification of Content Generated by Artificial Intelligence in the Copyright Law", published in "Legal Science (Journal of Northwest University of Political Science and Law)", Issue 5, 2017.
- [7] Li Yang, Li Xiaoyu. An Exploration of Copyright Issues of Artificial Intelligence Generated Works from Kant's Philosophical Perspective [J]. Intellectual Property, 2018(9): 43-54.

- [8] Xu Mingyue, Tan Ling: "On the Protection of the Neighboring Rights of Artificial Intelligence Creations - Theoretical Justification and Institutional Arrangement", *Comparative Law Studies*, Issue 6, 2018.
- [9] Xu Minchuan, Ma Wenbo, On the Reconfiguration of the Order of Copyright Rights for Artificial Intelligence-generated Content [J], *Journal of Southeast University (Philosophy and Social Sciences Edition)*, 2019(05).
- [10] Zuo Weimin. Some Thoughts on the Application Prospect of Legal Artificial Intelligence in China [J]. *Tsinghua Law Review*, 2018(02).
- [11] Yang Lixin. An Attempt to Solve the Legal Adjustment Issues of Artificial Intelligence Using Current Civil Law Rules [J]. *Zhongzhou Academic Journal*, 2018(07).