

Adhering to the Traditional Standard of Originality in the Era of Artificial Intelligence

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Abstract : With the emergence and application of ChatGPT, the issue of copyright ownership for artificial intelligence-generated works has once again drawn attention in the academic community. Compared to previous AI technologies, the level of intelligence of ChatGPT can be described as disruptively enhanced. The recent amendment to copyright law not only clarifies the definition of work through Article 3 but also changes the catch-all clause from "other works stipulated by laws and administrative regulations" to "other intellectual achievements that meet the characteristics of a work", which seems to reflect the legislative attitude towards expanding the types and scope of works protected by copyright. In addition, the term "audiovisual works" replacing "cinematographic works and works created by methods similar to filmmaking", as well as the rise of short video platforms and the emergence of various new types of works (such as AI-generated works), have sparked discussions in academia about the level of copyright protection that should be provided for these new "works". However, the prerequisite for providing protection to these new "works" is an analysis of their copyrightability, that is, whether they are works in the sense of copyright law and can meet the standard of originality. Originality, as one of the essential components of a work in copyright law, has reached a consensus in both academia and the judicial domain. However, there is not yet a complete system for judging the meaning and degree of originality, leading to confusion in the criteria for assessing originality. Originality is supposed to be a scale in the hands of judges, but this scale lacks gradations. After analyzing different theories and cases related to originality, this article advocates for adherence to the standard of originality judgment, not arbitrarily applying the same originality standard to all types of works nor ignoring the changes in creative methods and dissemination modes brought about by technology. We allow for corresponding adjustments and interpretations based on the different forms of work. For example, to address the need to protect computer software and data compilations, the European Union issued the "EU Directive on the Legal Protection of Computer Programs" in 1991 and the "EU Directive on the Legal Protection of Databases" in 1996, proposing a standard of "author's own intellectual creation" for the issue of originality in works. For instance, Article 1(3) of the "EU Directive on the Legal Protection of Computer Programs" stipulates that computer software is protected only if it is original and is the author's own intellectual creation. No other standard should be applied to determine the legality of the protection of computer software. Similarly, Article 3 of the "EU Directive on the Legal Protection of Databases" provides that databases, by virtue of the selection and arrangement of their contents, are protected only if they constitute the author's own intellectual creation, and no other standard should be applied to determine the legality of this protection. Clearly, "author's own intellectual creation" is a standard that lies between the "spirit, emotion, personality" criteria of the author's rights system and the "skill, judgment, labor" criteria of the copyright system. For example, even in Germany, which emphasizes a high degree of creation, the "small coin" theory is applied to make special judgments on the originality of computer programs, product descriptions, tables, catalogs, etc. Appropriate adjustments and interpretations are our response to technological progress, but what we adhere to are the principles and bottom lines of these adjustments and interpretations, which are the legislative intent and purpose of copyright law. Technological development will never cease, and in the face of challenges brought by technological innovation, in addition to utilizing hermeneutical methods to make reasonable interpretations of existing theories based on the inclusiveness of language and text, we can make adjustments through judicial interpretations. Furthermore, the systematic nature of law can be employed to examine whether related legal systems can resolve such conflicts. Taking originality as an example, for works with different degrees of originality, both the fair use system and the neighboring rights system can offer reasonable interpretations.

Keywords : copyright, data protection, property right, intellectual property

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