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The Uncertain Boundaries of Authors' Rights in AI Authorship: A Comparative Study of IP Authorship in AI-created Works in China vs the UK.

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Abstract

The recent surge in public engagement with ChatGPT and its competitors has prompted governments and international agencies to urgently reassess the adequacy of existing intellectual property legislation.

Objective: This study aims to address whether current legal frameworks are sufficient and, if not, how they might be developed to accommodate the complexities introduced by artificial intelligence. Specifically, this research explores two central questions: first, whether creative and factual works generated by AI can be protected under authorship rights or copyright, and if so, to whom these rights should be attributed. The prevailing global consensus dictates that authorship must reside with a human, who can bear legal responsibility, thereby acknowledging protection for AI-assisted works but not for those entirely generated by AI. Second, the study examines the legislative strategies of the UK and China, both of which are striving to position themselves as leaders in AI innovation. China has adopted a utilitarian legislative approach, expanding the scope of protectable AI-assisted works, while the UK is contemplating the transfer of ownership to legal entities, potentially recognizing AI-created works as eligible for copyright protection. **Methodology:** Through a comparative analytical approach, this study. **Results:** that while global norms currently mandate human authorship, both the UK and China are exploring legislative adaptations that could extend intellectual property protections to AI-generated content. **Conclusion;** The research

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concludes that as AI continues to advance, substantial legal reforms may be necessary to align intellectual property law with the evolving landscape of AI-driven creativity*.

Keywords: Intellectual property law - Authors rights - Creative work - The Authors financial right - Artificial intelligence.

1. Introduction

Last year's public launch of Chat GPT and its competitors has given rise to many concerns on ethics but also raises questions surrounding Intellectual Property and authorship. Indeed, two high-profile lawsuits were filed against OpenAI, the owners of ChatGPT, in June 2023 by two authors, and in September 2023, by seventeen authors supported by The Authors Guild (US)⁽¹⁾, suing for "flagrant and harmful infringements of Plaintiffs' registered copyrights in written works of fiction," and "systematic theft on a mass scale". These are likely to be the first of many such cases, disputing authorship rights, both of the final output of generative AI and of infringed copyright source material.

For many, Artificial Intelligence (AI) is used purely to ask questions for the purpose of comprehension. However, AI has many prospective practical uses, from "improved health care, fewer breakdowns of household machinery, ... better public services; ... cybersecurity, ... (and reduced) costs of providing services (transport, education, energy and waste management)".⁽²⁾ There are also many cases of AI being used for creative endeavours, whether to produce images and art in specific styles, such as the reproduction of Rembrandt's work⁽³⁾ or even to write sermons⁽⁴⁾, often merely out of curiosity about what AI can achieve and

(1) Authors Guild v. OpenAI Inc, 1:23-cv-08292, (S.D.N.Y. 2023).

(2) European Commission (n 1), 2.

(3) ING, 'The Next Rembrandt', (online) <www.nextrembrandt.com> accessed 22nd August 2023; ING, 'Rembrandt Goes Digital' ING Newsroom (6th April 2016) <www.ing.com/Newsroom/News/Rembrandt-goes-digital-.htm> accessed 22nd August 2023.

(4) Justin E. Lane, *Understanding Religion Through Artificial Intelligence: Bonding and Belief* (Bloomsbury, London 2021), 151; En Rui Chua 'ChatGPT's Gospel Preaching Process: A Grounded Theory Study' (2023) *Advance* (Sage Publishing) Preprint. <<https://doi.org/10.31124/advance.23257727.v1>> accessed 24th July 2023; Giulia Isetti and others (Eds), *Religion in the Age of Digitalization: From New Media to Spiritual Machines* (Routledge, 2020); OpenBible, 'AI Sermon

how well it can mimic a human. Xiaoice, an AI system developed in 2014 by Microsoft (Asia) Software Technology Center and used in China, Japan, Indonesia and the US was used to produce a highly successful paperback book of 139 AI-generated poems, entitled “The Sunshine Lost Windows” in 2017.⁽⁵⁾ More everyday commercial uses exist: some news distributors, such as The Associated Press, use AI to generate data-driven news reports, such as sports, stock market and financial updates, allowing a faster generation of articles and freeing up the resource of human reporters for more complex stories and investigative journalism.⁽⁶⁾ There are concerns regarding its use for more serious, yet ethically grey (or straight-up unethical) purposes, such as to complete academic essays or coursework for accredited exams, academic journal papers, possibly barristers' court arguments and even a GPT Judge.⁽⁷⁾ As we move into the fields of commercial artwork, fictional writing, or the more profitable matter of inventions, the question of Intellectual Property arises.

2. Methodology

This paper investigates two primary questions, the first explores if AI is used to generate an idea, or even take this further to propose a complete patent or model or draft a plan, could the idea be owned? If so, would the Intellectual Property belong to the software designer who wrote the algorithm, including how the program would search for and process the training data, allowing it to be able to piece together

= Outline Generator’ (Creative Commons Attribution License) <www.openbible.info/labs/ai-sermons/> accessed 25th July 2023; Leah D. Shade, ‘Did AI (Artificial Intelligence) Write Your Pastor’s Sermon?’ Patheos (Feb 1st 2023) <www.patheos.com/blogs/ecopreacher/2023/02/did-ai-artificial-intelligence-write-your-pastors-sermon/> accessed 25th July 2023.

- (5) Xiaoice (AI), *Sunshine Misses Windows* (阳光失了玻璃窗) (Cheers Publishing, Beijing, 2017), see Wen-Feng Cheng, Chao-Chung Wu, Ruihua Song, Jianlong Fu, Xing Xie, Jian-Yun Nie, ‘Image Inspired Poetry Generation in XiaoIce’ (2018) arXiv:1808.03090v1 < <https://arxiv.org/pdf/1808.03090.pdf>> accessed 22nd August 2023
- (6) The Associated Press, ‘Leveraging AI to Advance the Power of Facts’ (website) <www.ap.org/discover/artificial-intelligence> accessed 2nd August 2023.
- (7) Maura Grossman and Paul Grimm, Dan and Brown Molly Xu, ‘The GPTJudge: Justice in a Generative AI World’ (2023) 23 (1) *Duke Law & Technology Review*, (Duke Law School Public Law & Legal Theory Series No. 2023-30).

the gathered information to create, or would the Intellectual Property belong to the user who posed the correct question, with the correct keywords, allowing the programme to extract pertinent information from its millions of data files? These questions are not yet clear and are under discussion across the world.

Secondly, this paper will comparatively assess how both the UK and China are approaching these questions, both of whom are racing to amend copyright legislation in support of AI innovation, with the hope of becoming a leading centre of excellence in the field and attracting international investment.

This paper will briefly examine global conventions and international law, which affect both China and the UK, such as the 1971 Berne Convention, which covers authorship rights for its 181 signatory nations, and whilst it covers the term “author”, it is left to the individual nations to define.

Starting with the UK, it is seen how the UK government is already very supportive of generative AI companies. It permits data mining of any original works freely available, as long as it is for “public good” and within “fair dealing”. UK legislation also accepts originality without personality. Plagiarism will be mentioned to state that it is out of scope for the paper.

This leads to fair dealing of the AI algorithm and does the programmer or the AI user own the creation, and the further question of whether robots are the creator or the created.

The UK contrasts with China in terms of definition of author, requiring originality but also emphasising the importance of the labour and skill input into the work (perhaps ironic considering it is allowing AI to data mine original authors' works for an amalgamated output). The paper will then compare this approach to that of China, who, far advanced in the fields of IT and innovation, provide greater protection for original authors. China also emphasises a sense of “personality”, or human input, in the work and stands out for its lack of distinction between AI-assisted and AI-generated works, stating that all of the output requires human skill and is therefore AI-assisted and has potential for copyright.

Both the UK and China allow a form of transfer for the rights, particularly for “works made for hire”, i.e., from a human AI-user or an AI-generative programme, to an overseeing employer, but the two nations do so in a different form. The two nations, are amongst many just initiating discussions on how AI will develop and how to both support innovation and authorship rights, and protect citizens. Legislation will change very quickly, but is currently limited by implementation time and understanding.

3. Algorithm writers v user and the creation of robots

3.1 AI-generated vs AI-assisted

To clarify, AI-generated is new material completely created by an AI software, using algorithms and ‘training data’, with limited input from the user. For example, if a user requested a report on the stock market in Denmark, the software will assess reports on similar topics in its training data or those freely available on the internet to reproduce a similar format, syntax and writing style. Then by accessing current stock market positions, that information can be generated into a report for the user, with data in appropriate tables and graphs. Of course, the AI requires algorithms to process the data and instruct it how to search etc, it has also had a input request but the material generated in that format is new, with limited human input. AI-assisted on the other hand could be a person using software to search for reports to find stock market information and to investigate and choose an appropriate presentation style.

3.2 Ownership of Content

An aspect of fair use or fair dealing is in the application of the AI algorithm to create. Does the creation then belong to the algorithm’s writer or to the user of the software? ChatGTP’s user terms states the latter; although not all AI sites state this.

“Ownership of Content. As between you and OpenAI, and to the extent permitted by applicable law, you (a) retain your ownership rights in Input and (b) own the Output. We hereby assign to you all our right, title, and interest, if any, in and to Output.”⁽⁸⁾

(8) OpenAI, ‘Europe Terms of Use’ Updated 14th November, Effective December 14, 2023 <<https://openai.com/policies/eu-terms-of-use>> accessed 21st November 2023.

Currently, AI is not 'intelligent' or independent enough to genuinely create on its own. We can put a human-like casing on it and programme it with human mannerisms, such as Ameca, the robot who runs on Chat GTP4 technology, making it look and sound like a person of independent thought, but for the moment, it is all very much taken from a collection of human-programmed algorithms and closely mimicked training data.⁽⁹⁾ Therefore, what is generated may be genuinely unique and novel, non-obvious and add benefit to the field and it may be patentable, however, the creator will most likely be the user, who has effectively understood the most effective way to utilise the AI's capabilities, limitations and algorithms to elicit a useful response. This person is the creator. Although, there is definite potential for the algorithm programmer to be a joint author and copyright holder,⁽¹⁰⁾ particularly if their algorithm is unique.

Technology will advance however, and AI is likely to become more self-governing. Already global regulations are changing.

4. Global Regulatory Framework

4.1 The Berne Convention

A collection, selection, and arrangement of data into something new, a "new" that is simply a collection edited to contain fewer items of the original. AI does something akin to this, and yet also so much more: copying data, selecting, and applying knowledge via an algorithm as a human using their neural net to decide how to interpret styles it has "learnt" to "create". The more we understand how the human brain makes decisions, the less unique it may appear and the easier to copy via algorithms, and as with many science fiction literature examples, the blurring between the two narrows and how we interpret what is "creative" or made with "personality" or emotion becomes more difficult to judge and we will need definitive ethical discussions as to

(9) Engineered Arts, 'Ameca: The Future Face Of Robotics' (webpage) www.engineeredarts.co.uk/robot/ameca/ accessed 4th January 2024; Matt Growcoot, 'Unsettling App Gives ChatGPT a Face and Lets You Talk to 'Her' PetaPixel (online April 28 2023) <<https://petapixel.com/2023/04/28/unsettling-app-give-chatgpt-a-face-and-lets-you-talk-to-her/>>

(10) Copyright, Designs and Patents Act 1988, s10.

the inclusion of AI-copyright protected worth and the “personality” clauses. Internationally the Berne Convention of 1971, updated in 1979, gives agreed guidance on copyright law. Whilst Article 5⁽¹¹⁾ permits a creator protection in any signee State, regardless of the State of origin, it still only permits the minimum protection afforded in the State in question. For true business competitiveness, it makes sense for the UN to propose this topic of discussion to the soon-to-be-formed “multi-stakeholder High-level Advisory Body on Artificial Intelligence”,⁽¹²⁾ as an agreed consensus would be beneficial to all.

The current topics put forward for prospective papers, as a point of discussion points for the Committee are:⁽¹³⁾

- “Key Issues on Global AI Governance: studies and recommendations of important themes and priorities for the High-Level Advisory Board on AI, especially those that should specifically be addressed through global governance.
- Current Efforts in Global AI Governance: analyses covering bilateral, multilateral, and inter-regional initiatives, including different philosophical approaches, critical perspectives, and recommendations.
- Models in Global AI Governance: papers analysing existing models, or proposing new models, as well as surveys and analyses of other proposals are welcome.”

IP could be considered as part of *initiatives*, in *philosophical approaches* and *Global AI Governance*, although not specifically pinpointed.

Whilst AI could be used to assess registration applications or liability cases, it should be done so with human review to ensure fairness.

(11) *ibid.*

(12) UN, ‘Multistakeholder Advisory Body on Artificial Intelligence’ Tech Envoy (online, Office of the Secretary-General’s Envoy on Technology) <www.un.org/techenvoy/content/artificial-intelligence> accessed 29th August 2023.

(13) *ibid.*

A 2020 British hearing addressed an interesting perspective. Corey Reaux-Savonte, founder of REZIINE, raised a UK patent for his RAICEngine, a “structured array of data”⁽¹⁴⁾, “a software engine that emulates human consciousness in a machine by recreating functions of the human brain computationally” giving an AI system “personality, emotions, opinions, and memories”.⁽¹⁵⁾ However, the patent claim was rejected under section 18(3), stating that it was not yet a complete program, merely computer code and could not serve a useful contribution in its current state. This will be an interesting project to follow if the RAICEngine is successful, as it raises several questions. Presumably if this code results in a functioning programme and it is indeed unique it will be copyrightable under copyright law.

There have been at least two attempts to patent inventions with and AI system as the creator at the European patent Office.⁽¹⁶⁾ These were denied in 2019, on the grounds that the inventor must be a human.

Part of the challenge is a “lack of technical definitions”⁽¹⁷⁾, such as differentiating AI-generated and AI-assisted, and a lack of clear boundaries, with different organisations denoting different things. This is clearly because the technology is new and rapidly changing.

The WIPO had its 8th Conversation on Intellectual Property and Frontier Technologies September 2023, with 5000 attendees across 162 countries, however the summarised results had not yet been published. WIPO did however put forward forty-five development recommendations on IP, in general, during the conference, and reported that the conference ‘underscored the pressing need for responsible regulation that supports creativity while protecting IP rights in the age of AI, challenging the global IP community to rise to the occasion.’⁽¹⁸⁾ For now, a human has

(14) IPO, UK Patent Application Decision BL O/284/20 (Reaux-Savonte) <www.ipo.gov.uk/p-challenge-decision-results/o28420.pdf> accessed 24th July 2023.

(15) REZIINE, ‘RAICEngine The world's first engine for Artificial Consciousness’, <www.reziine.com> accessed 24th July 2023.

(16) Daria Kim ‘AI-Generated Inventions’: Time to Get the Record Straight? (2020) 69 (5) GRUR International, 443

(17) *ibid*, 445

(18) WIPO ‘8th WIPO Conversation Wraps Up, Igniting Discussions on Generative AI's Impact on Intellectual Property’ September 22 2023 < www.wipo.int/about-ip/en/frontier_technologies/news/2023/news_0002.html> accessed 4th January 2024.

to be the inventor, but previous meetings are raising questions that may change things for the global community in the future,

“Should the law permit or require that design protection be accorded to a new AI-generated design that has individual character? If a human designer is required, should the law give indications of the way in which the human designer should be determined, or should this decision be left to private arrangements, such as corporate policy, with the possibility of judicial review by appeal in accordance with existing laws concerning disputes over authorship?”⁽¹⁹⁾

5. UK Law

5.1 Paper limitations : Public good, fair dealing and plagiarism in UK copyright

Griffiths describes the UK legal response to copyright as “a dematerialized, malleable essence (‘originality’, ‘labour and skill’ or ‘creativity’).”⁽²⁰⁾ UK legislation is covered by the Copyright, Designs and Patents Act 1988. It permits “fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work”, provided there is acknowledgement of the author (where practical), that the usage of the work is not excessive and that the work is already publicly accessible.⁽²¹⁾ It is worth noting that UK law does protect the moral rights of the author, preventing derogatory treatment of their work and preventing public access and ensuring the right to be acknowledged as the author.⁽²²⁾ The UK Government’s June 2022 response to a consultation on whether AI creations should be protected by Intellectual Property and copyright laws, was to support data mining for the “public good”,⁽²³⁾ which had mixed reviews, with concerns by original content creators regarding

(19) WIPO ‘WIPO Conversation On Intellectual Property (Ip) And Artificial Intelligence (Ai) Second Session’ WIPO/IP/2/GE/20/1 Rev May 21 2020.

(20) Jonathan Griffiths, ‘Dematerialization, Pragmatism and the European Copyright Revolution’, (2013) 33 (4) Oxford Journal of Legal Studies 767.

(21) Copyright, Designs and Patents Act 1988 s30 (1).

(22) *ibid*, s2.

(23) UK Government ‘Artificial Intelligence and IP: copyright and patents’ (Press release, 28 June 2022, Intellectual Property Office) <www.gov.uk/government/news/artificial-intelligence-and-ip-copyright-and-patents>.

plagiarism. Data mining software, used by Digital AI companies, search for and analyse expansive examples of images or texts for patterns, trends, and colours as “training data”, to build a database and “learn” what makes a certain image or language style so that it can create a “unique” interpretation of that style. There are emerging many cases where these “unique” interpretations feature aspects that are very close to the work of the original artist, or possibly indeed feature a section of the original “training material” source, however such occurrences are disputed.⁽²⁴⁾ The UK government's decision was to extend copyright law, to allow that “anyone with lawful access to material protected by copyright should be able to carry out this analysis without further permission from the copyright owner”.⁽²⁵⁾ Also art protecting software such as Glaze⁽²⁶⁾ exist, which disrupts AI image style-reading software so that it “misreads” the style. Therefore, copyright discussions are limited to discussing whether authorship and Intellectual Property belong to the software developers and their AI, or to those formulating the creative request.

5.2 The UK's acceptance of originality without personality

The Berne Convention leaves the term “author” to be defined by member states. In some cases, it must be “natural persons”, in others it can be a legal entity.⁽²⁷⁾ There is a contrast between US/UK common law approaches to copyright and that of the EU and China. The UK/US require originality (also a requirement of the Berne Convention), with the UK also specifying evidence of the “author’s own skill, labour, judgment and effort”.⁽²⁸⁾ The initial purpose of the copyright law here

(24) Shanti Escalante-De Mattei>, ‘Artists Voice Concerns Over the Signatures In Viral LensaAI Portraits’ ARTnews (December 9, 2022) <www.artnews.com/art-news/news/signatures-lensa-ai-portraits-1234649633/> accessed 21st July 2023.

(25) *ibid.*

(26) Bem Zhao, Glaze, 2023 <<https://glaze.cs.uchicago.edu/what-is-glaze.html>> accessed 31st July 2023

(27) Berne Convention for the Protection of Literary and Artistic Works (Paris Act of July 24, 1971, as amended on September 28, 1979), cited in Bingbin Lu, ‘A Theory of ‘Authorship Transfer’ and its application to the context of Artificial Intelligence creations’ (2021) 11 (2) Queen Mary Journal of Intellectual Property, 2, 4.

(28) A Rahmatian. ‘Originality in UK Copyright Law: The Old “Skill and Labour” Doctrine Under Pressure’, (2013), 44, IIC, 4, 5 <<https://doi.org/10.1007/s40319-012-0003-4>> accessed 11th August 2023.

was not to protect the idea and originality, but to protect the labour and financial input, in other words, to prevent people from utilising another's hard work and financial output to gain profit with no input or work themselves; to essentially get "a free ride".⁽²⁹⁾ The EU and Chinese law, require evidence of "personality" in the work. Therefore, one might argue that Common Law countries may be best suited to accept AI authors, without significant change to copyright law. The EC ruling for "Infopaq International v. Danske Dagblades Forening"⁽³⁰⁾ held that according to "the Software Directive, the Database Directive and the Term Directive, computer programs, databases or photographs are protected by copyright only if they are original in the sense that they are their author's own intellectual creation". Rahmatian explained how in *Bezpečnostní softwarová asociace* the courts clarified a "graphic user interface", which aided in the communication between a computer programme and the individual utilising it, is copyrightable providing that the layout and design were not obvious by its function and that it contained original components.⁽³²⁾ Yet, EC law still required evidence of the programmer's personality within the software presented for copyright protection, whether that be the source code or the human-machine interface.⁽³³⁾ The likelihood is that in coding the software, the programmer does have to input their own quirks and style of programming into the language, however, it would require a legal team with coding knowledge to interpret this. Again, due to these differences, the UK would be better suited to adapt to protect coders.

Lu divides AI into weak and strong AI. Weak AI is used for simple tools, such as databases, where copyright law is easily derived to apply. Strong AI is more complex; in its ability, its construction and in terms of the application of copyright legislation.⁽³⁴⁾ Lu argues that advanced

(29) Ibid, 12.

(30) Infopaq International v. Danske Dagblades Forening [2009] ECDR 16 (Case C-5/08).

(31) Ibid.

(32) *Bezpečnostní Softwarová Asociace V. Svaz Softwarové Ochrany V Ministerstvo Kultury* [2011] FSR 18

(Case C-393/09), cited in Rahmatian [n 26], 8 [n 15].

(33) Rahmatian [n 26], 26.

(34) Bingbin Lu, 'A theory of 'Authorship Transfer' and its Application to the Context of Artificial Intelligence Creations' (2021) 11 (2) Queen Mary Journal of Intellectual Property, 2, 4.

or “strong” AI, designed to work as artificial neural networks do, within coded (or self-developed) parameters, make original, “free and creative choices”, as required by EU law.⁽³⁵⁾ Two aspects are still, however, outstanding, the requirement of personality and the ability for a machine or programme to be able to assume legal responsibility. Therefore, the authorship would need to drop back to either the programmer or the user who has selected the creativity parameters, provided that they fulfil the minimum requirements for original, creative, input. Is it possible for two users to input identical parameters, and for the same AI to develop a completely difference output for each? Perhaps dependant on a randomness parameter built into the algorithm, or due to updated information available on the internet? Therefore, would the uniqueness be due to the algorithm and the programmer or to the user and their parameters, or indeed the shared creativity of the two?

6. Copyright protection of AI-generated text in the People's Republic of China

As of recent years, Chinese law has been equally as vague, with such matters being covered by various legislations and amendments,⁽³⁶⁾ the most recent being the Decision of the Standing Committee of the National People's Congress on amending the Copyright Law of the People's Republic of China, adopted on November 11, 2020.⁽³⁷⁾ Dai and Jin⁽³⁸⁾ have produced a detailed treatment of the legislative developments of AI authorship in China. The most significant case being that of *Shenzhen Tencent Computer System Co., Ltd. vs Shanghai Yingxun*

(35) Lu, ‘A Theory of ‘Authorship Transfer’ [n 31] 17.

(36) The Copyright Law of the People's Republic of China September 7, 1990; the regulation on Recommendation Algorithms, 2021; the Rules for Deep Synthesis 2022; and the Regulations of Generative AI, 2023; various amendments have been made to the 1990 Copyright Law.

(37) WIPO Lex, ‘Copyright Law of the People's Republic of China (amended up to November 11, 2020)’ <www.wipo.int/wipolex/en/legislation/details/21065> accessed 27th July 2023. The most recent official English translation being that of the 2010 amendment) Chinese Government, ‘Copyright Law of the People's Republic of China (2010 Amendment)’, The State Council of The People's Republic of China, <https://english.www.gov.cn/archive/laws_regulations/2014/08/23/content_281474982987430.htm> accessed 27th July 2023.

(38) Zhe Dai, Banhui Jin, ‘The Copyright Protection of AI-generated works under Chinese Law’ (2023) 13 (2) Judicial Tribune 241.

Technology Co., Ltd. in 2019,⁽³⁹⁾ whereby Nanshan District Court in Shenzhen held that AI-generated text could be protected by copyright. The software firm that developed Tencent Dreamwriter AI, used the software to generate a financial report, which it launched on an internal website. *Shanghai Yingxun Technology Co., Ltd* openly shared parts of the article on a public website; Tencent sued and was granted lost earnings. The ruling was based on the original *work* requiring human involvement and “intellectual labour”⁽⁴⁰⁾ to set the requirements of the AI-generated text.

Chinese Copyright Law at the time⁽⁴¹⁾ provided a definition for “work”, which was clarified in a published “Guideline for the Trial of Copyright Infringement Cases”, issued by the Beijing High People’s Court in 2018. The guideline defines “work” as being “a creation by natural persons within the scope of literature, art and science, ...[that is] original, [have] a certain form of expression...[and] can be copied”.⁽⁴²⁾ Judge Qi Lei, a contributor to the Guideline, announced that in addition to the need for the creator to be a “natural person”, the purpose of copyright and protecting “works” was to inspire the creation of such works, and since only humans could be inspired, AI could not hold, or did not require, authorship.⁽⁴³⁾ The legislation was applied to the *2018 Feilin v Baidu* case⁽⁴⁴⁾ and it was judged that data collated using an

(39) Decision of the People’s Court of Nanshan (District of Shenzhen) 24 December 2019 – Case No. (2019) Yue 0305 Min Chu No. 14010; ‘“Tencent Dreamwriter” Decision of the People’s Court of Nanshan (District of Shenzhen) 24 December 2019 – Case No. (2019) Yue 0305 Min Chu No. 14010’ Regulations for the Implementation of the Copyright Law of the People’s Republic of China, Arts. 2, 3. ‘Tencent Dreamwriter’ (2020) 51 IIC, 652 <<https://link.springer.com/article/10.1007/s40319-020-00944-9>> accessed 27th July 2023; Aaron Wininger, ‘Shenzhen Court Rules AI-Generated Articles are Entitled to Copyright Protection’.

(40) Aaron Wininger, ‘Shenzhen Court Rules AI-Generated Articles are Entitled to Copyright Protection’ China IP Law Update (1st March 2020) <www.chinaiplawupdate.com/2020/01/shenzhen-court-rules-ai-generated-articles-are-entitled-to-copyright-protection/> accessed 27th July 2023.

(41) Copyright Law of the People’s Republic of China, 1990, Ch 1, Art 3.

(42) Article 2.1, cited in Dai & Jin [n 38], 246.

(43) Dai & Jin [n 38], 246.
Dai & Jin [n 38], 247.

(44) Beijing Internet Court, Feilin Law Firm v Baidu Technology Company, Judgement 239, 2018.

AI algorithm was not unique and could not be protected by copyright. The Judge did acknowledge that extensive labour had been required, by both a software engineer and an end user, to generate that data and that labour should be protectable, it was not, however, possible within the law at that time.

Tencent v Yingxun⁽⁴⁵⁾ was brought to court four months later in August 2019, yet the courts' approach was a little different, with several relevant points of interest. The judge considered that a computer is not capable of producing work alone, of its own volition and impulse. Therefore, it could only ever be a tool, in this case requiring humans to write the algorithm and software, set the task and its parameters, and verify and circulate the resultant document. Firstly, whilst much of the world would discern between "AI-assisted" work and "AI-generated",⁽⁴⁶⁾ because Chinese law currently considers computers to be merely a tool, they assume that human intervention is always required at *some* stage, therefore all work produced using AI would be considered to be AI-assisted and therefore created by "natural persons". The US, for example of contrast, would only consider work to be AI-assisted and not AI-generated if "human participation" occurred at *every* stage enabling full control and prediction of the outcome.⁽⁴⁷⁾ Secondly, the work was commissioned for Tencent to their specific requirements by a matrix of teams, which would support the work being defined as a "work for hire". Under Chinese Copyright Law, Art 11, for any work completed "under supervision and responsibility of a legal entity ..., such legal entity ... shall become the author of the work." Thirdly, Dai & Jin⁽⁴⁸⁾ discuss the impact of utilitarianism in China, compared to Author's rights and copyright law schemes. They explain that Authors' rights, generally found in civil law countries, focus on protecting the author, stemming from a base of natural law. Whereas, common law countries tend to follow copyright law, with a focus on preserving the public interest and utilitarianism, but with the inclusion of natural law in the form of labour

(45) Court of Nanshan (District of Shenzhen) *Tencent Computer Company v Yinxun Technology Company*, Judgement 1410, 2019, discussed in Dai & Jin [n 38], 248.

(46) Dai & Jin [n 38], 252.

(47) United States Copyright Office, *Re: Zarya of the Dawn* (Registration # VAu001480196), 8-9, cited in *ibid*, 249.

(48) Dai & Jin [n 38], 254.

law. Mainland China, South Korea, Japan, North Korea, and Taiwan, on the other hand, follow the “work right system”, a merging of copyright and authors’ rights, but with no influence of natural law (as per national traditions in that area), where that main emphasis is whether the invention benefits the nation and public interest. With these points in mind, it is logical that the Chinese judiciary would want to use the *Tencent v Yinxun* to emphasise support of AI-generated material – or, according to the current law, AI-assisted - to develop China as a centre of AI innovation. To provide the best opportunities in future situations, *Tencent v Yinxun* has been included in the updated edition of the Supreme People’s Court of China’s case guidance system, a collection of model laws, despite China not generally following a common law style system of following precedent.⁽⁴⁹⁾ It was also published as one of China’s Top Ten Intellectual Property Cases.⁽⁵⁰⁾ The guidance system was incorporated to be “de facto binding decisions that courts⁽⁵¹⁾ “at all levels should refer to...when adjudicating similar cases”, in an aim to “unify legal standards, improve judicial efficiency, and limit judicial discretion.”⁽⁵²⁾ It is important to note that there is disharmony over the judgement and concerns that if all AI-assisted works are granted copyright, it will devalue the work of human authors, resultantly achieving the reverse effects of encouraging innovation and benefiting public good.

To delve further into the articles of Chinese copyright law, Chapter VI Supplementary Provisions, Article 59 of the Copyright Law states that “Regulations for the protection of computer software and of the right of information network dissemination shall be established separately by the State Council”.⁽⁵³⁾ Software is itself treated as something “authored”. As is something produced (such as text or visuals). It suggests that usage of software is permitted as long as the user has lawful authorisation to use

(49) Tian Lu, ‘The Case Guidance System in China: A Practical Guide to Intellectual Property Cases’, (2021) 16 (3) *Journal of Intellectual Property Law & Practice* (OUP) 207.

(50) Tian Lu, ‘Comment on the Announcement of the Top Ten Intellectual Property Cases of 2020 in China’, (2022) 71 (4) *GRUR International* (OUP), 346.

(51) *Ibid*

(52) —, ‘Chinese Common Law? Guiding Cases and Judicial Reform’ (2016) 129 (5) *Harv L Rev* (International Law Note) 2213.

(53) Chinese copy rights Law

the software (Ch V, Article 59). It also defines that “author’s right” is interchangeable semantically as “copyright” (Art 57). However, it does not specify where authorship lies in situations where the work is produced by the software, but with the guidance of the software user, in situations where that user is not the software designer. Logic might suggest that the user who inputs the limitations, factors and research requirements is the “producer” or author of the piece, in the same way that a photographer owns the copyright of the photographs they have taken; they do not belong to the camera manufacturer.⁽⁵⁴⁾ Lu argues against this, however, saying that the original creative work comes with the software design and credit is due only to the person generating the limitations for the output.⁽⁵⁵⁾

The 2020 amendments focus on strengthening the rights of the copyright owner⁽⁵⁶⁾, for example, Article 3’s wording was broadened to provide more coverage, from “including works of literature, art, natural sciences, social sciences, engineering and technology, etc. created in the following forms...” to “refers to intellectual achievements in the fields of literature, art and science that are original and can be expressed in a certain form, including: (1) Written works; (2) Oral works; (3) musical, dramatic, art works; (4) Fine art and architectural works; (5) Photographic works; (6) Audiovisual works; (7) Graphic works and models such as engineering design drawings, product design drawings, maps, and schematic diagrams; (8) Computer software; (9) Other intellectual achievements that meet the characteristics of the work”.⁽⁵⁷⁾

(54) Chinese Government, ‘Copyright Law of the People’s Republic of China (2010 Amendment)’, The State Council of The People’s Republic of China, <https://english.www.gov.cn/archive/laws_regulations/2014/08/23/content_281474982987430.htm> accessed 27th July 2023.

(55) Lu, ‘A theory of ‘authorship’ [n 31]

(56) WIPO, ‘China: Decision of November 11, 2020, of the Standing Committee of the National People’s Congress on Amending the Copyright Law of the People’s Republic of China’ (1st June 2021) <www.wipo.int/news/en/wipolex/2021/article_0009.html> accessed 1st August 2023.

(57) Chinese Government, ‘Decision of the Standing Committee of the National People’s Congress on amending the Copyright Law of the People’s Republic of China 11th November 2020’ <www.gov.cn/xinwen/2020-11/11/content_5560583.htm> (translated into English by Explorer internet browser) accessed 1st August 2023; Joan Barata, Bolin Zhang, ‘Copyright Law of the People’s Republic of China (2020 Amendment)

3rd Amendment to Copyright Law, Effective June 1st 2021’ Stanford WILMAP (May 11 2021) <<https://wilmap.stanford.edu/node/31101>> accessed 1st August 2023.

It appears to be emphasising the requirement for *originality* in what is being copyrighted, perhaps (an assumption) to ensure that those using AI generators do not try to copyright something that is poorly adapted from training materials and too close to the original. To combat this, China's regulations on algorithms require that the software developer register their AI training algorithms with a government repository, ensure they follow specific security standards and ensure disclosure to the public regarding the information taken.⁽⁵⁸⁾

It is interesting to note that the amendment to Article 16, with regards to sound and video recordings, states that any "publication, performance and production ... resulting from adaptation, translation, annotation, collation and compilation of existing works shall obtain permission from the copyright owner of the work and the copyright owner of the original work, and remuneration shall be paid."⁽⁵⁹⁾ There is no mention of whether this would apply to other forms of creative work, for example, if an AI database used written or visual art to create an "original" piece, "adapted" from the actual original/s. Reproduction for the purposes of AI training or information generation by AI is not included in Article 24's Limitation of Rights.⁽⁶⁰⁾ The amendment does support creators protecting their work by the introduction of technological protection measures (TPM), such as paywalls and subscriptions for anyone wishing to access their work⁽⁶¹⁾. This would make it less likely for artists with TPMs to be included in training material.

6.1 China's updated regulations

On 6th July 2023, the Chinese Government announced a plan to regulate in support of "generative AI". Departments including The

(58) Matt Sheehan, 'China's AI Regulations and How They Get Made' Carnegie Endowment for International Peace (10th July 2023) <<https://carnegieendowment.org/2023/07/10/china-s-ai-regulations-and-how-they-get-made-pub-90117>> accessed 2nd August 2023.

(59) *ibid.*

(60) *ibid.*, s4 art 24.

(61) WIPO, 'China: Decision of November 11, 2020, of the Standing Committee of the National People's Congress on Amending the Copyright Law of the People's Republic of China' (1st June 2021) <www.wipo.int/news/en/wipolex/2021/article_0009.html> accessed 1st August 2023.

National Development and Reform Commission, the Ministry of Science and Technology⁽⁶²⁾ and the internet watchdog issued a regulation to promote innovation in the application of AI technology to support various industries, such as education, research, and industry, whilst putting in place measures to safeguard data protection and underage users, and to prevent “fake news”.⁽⁶³⁾ This came with anticipation that China would generate 10% of the World’s total income in AI in 2023, approximately US\$14.75Bn, with hopes to reach RMB 1 trillion by 2030.⁽⁶⁴⁾ The new regulations put the responsibility of content creation on to the providers of the generative AI, both the developers and those generating the new “creation”. The former being responsible if omissions or inclusions result in a risk to end-line consumers/users. However, the new regulations regarding the developer are very focused on how the algorithm collects and creates data, not so much on how it is used down the line. It, therefore, likely that the developer will be included in the intellectual property or copyright.

7. Authorship Transfer in China and the UK

Lu proposes that creative pieces generated by strong AI should be covered by an adapted form of “authorship transfer”, to overcome the need for a human author and a party who can accept liability.⁽⁶⁵⁾ Basing the idea on “works made for hire”, typically found in common law, such as the US Copyright Act,⁽⁶⁶⁾ whereby authorship, and the related copyright, is transferred by law from the person who actually penned the document to the legal person or entity who requested the work to be carried out. Unlike many civil law jurisdictions, China does recognise corporate authorship, therefore on first appraisal authorship transfer could be a possibility.

(62) Ibid

(63) The State Council ‘The People’s Republic of China, ‘China moves to support generative AI, regulate applications’ <http://english.www.gov.cn/news/202307/13/content_WS64aff5b3c6d0868f4e8ddc01.html> accessed 1st August 2023.

(64) Mark Parsons, Sherry Gong, and Tong Zhu, Ying Tang, ‘China’s proposals to regulate generative AI’ British Chamber of Commerce in China, (2023, July 6) <www.britishchamber.cn/en/generative-ai-regulations/> accessed 1st August 2023.

(65) Lu, ‘A Theory of ‘Authorship Transfer’ [n 31].

(66) Copyright Act, S 201(b) (US), as cited in Lu, ‘A Theory of ‘Authorship Transfer’. [n 31] 6.

The UK follows the Copyright, Designs and Patents Act (CDPA), an innovative law from 1988, which defines authorship for IT-derived art, where section 9 states, “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.”⁽⁶⁷⁾ There is some room for interpretation here; the software designer has, of course, taken measures essential for the creation of the work, and in some cases, if an employer has requested the creative piece, they may also have made arrangements for its creation, firstly by employing the software user, and possibly even going as far as setting the parameters. However, it seems quite clear that the most likely person to fit this description is the software user, who has prepared the parameters, possibly after an extensive research period and creative ideation, and carried out the running of the program.

Should there not be a definitive author, for example, if a super AI has self-generated a creative piece, and in the case of where the piece is created as work for hire, the CDPA does allow transfer of copyright to the employer, but authorship remains with the real creator of the original work, including where that piece is “... “computer-generated”, (which) in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work”.⁽⁶⁸⁾ So, on the surface, whilst the UK does not allow transfer of authorship, it does permit transfer of ownership, which would allow for different laws to exist in each country, with a different legal basis, but the same outcome. There does, however, arise a conflict. Copyright law, as described by Lu⁽⁶⁹⁾ is a creation protection law. Transferring authorship for the purpose of investment completely goes against the tenets of copyright law and protecting the creation. If it were intellectual property, it would be considered differently. And there is not always a financial investment made with regard to the entity that requested the work.

For authorship transfer to be valid, at least within the US, and applying Intellectual Property rights, the principle of “controller as

(67) Copyright, Designs and Patents Act, 1988, s 9 (3) (UK).

(68) *ibid* 178 (UK).

(69) Lu, ‘A Theory of ‘Authorship Transfer’. [n 31], 9.

author” should be applied; with the initial authorship transferred to “the entity who has imposed sufficient control over the creative process” and that person being the “constructive author”.⁽⁷⁰⁾ With control being either “actual” or “legal”, actual being that the outcome would not have occurred without the “actual” action of setting the AI parameters and running the programme, and legal being considered something like “proximate cause” as in tort law, where the act or omission of the act results in the outcome, and is done so with foresight, knowledge and experience to produce the said outcome knowingly.⁽⁷¹⁾ Of course, if one is being artistic, and inputting parameters, one may have an intention to create, but not know the specific outcome of that creation. But that may be said for any artistic endeavour, whether creating an abstract painting or writing a book; not all creators set out with a concrete vision. In the English common law case of *Nova Productions v Mazooma Games* [2007] EWCA Civ 219⁽⁷²⁾, a disagreement of authorship of a computer game and accused breach of copyright takes place. The LJ Jacob ruled in favour of the defendant, claiming that similarities had “little to do with the skill and effort expended by the programmer and do not constitute the form of expression of the literary works relied upon”.⁽⁷³⁾ The Judge, similarly to the Reziine patent rejection, concluded that broad, general ideas or similarities “do not form a substantial part of the computer program itself,”⁽⁷⁴⁾ as per Directive 2001/29/EC of The European Parliament and of The Council. LJ Jacob continued that:

“If it is the policy of the Software Directive to exclude both computer languages and the underlying ideas of the interfaces from protection, then it should not be possible to circumvent these exclusions by seeking to identify some overall function or functions that it is the sole purpose of the interface to invoke and relying on those instead.”⁽⁷⁵⁾

The idea being that copyright law should not “stifle the creativity of works” and “become an instrument of oppression rather than the

(70) *ibid*, 14.

(71) Lu, ‘A Theory of ‘Authorship Transfer’. [n 31], 14.

(72) *Nova Productions v Mazooma Games* [2007] EWCA Civ 219, 30 [247].

(73) *ibid*

(74) *ibid* 30 [248].

(75) *ibid* 47 [130].

incentive for creation.”⁽⁷⁶⁾ The judgement is supported by TRIPS (The Agreement on Trade-related Aspects of Intellectual Property Rights),⁽⁷⁷⁾ particularly Art 9.2 which expresses that “Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.”

8. Comparative Discussion

China’s regulatory laws are relatively well-developed, as is its AI research. Other nations are following suit, either establishing regulations, seeking advice from those more experienced or waiting to see what successes and pitfalls China, the UK, and others experience. Some observers make a good point that regardless of how much discussion is had and what regulations are established, China is ahead of the game and has a strong interest in driving forward with AI research to control the global market on AI-driven technology. It would therefore follow that China, in those circumstances, would likely dictate, or at least strongly influence, the regulations and usage.⁽⁷⁸⁾ Despite China’s lack of natural law, focusing more on the utilitarian approach of what is in the public interest and the nation at large, China appears to have stronger laws protecting the original work of authors; both in encouraging paywalls to prevent incorporation of their works in AI training materials, and in copyright and Authorship law insisting that any adaptation of existing work requires permission and remuneration. Whilst computer-created content is copyrightable, there is a requirement of “personality” evident in the work, which supports human inclusion in the creative process, whether that would be the software engineer or the end user. Recent plans to reform legislature and support generative AI in the Republic of China, emphasise the security of users and the accuracy of the information being generated. It appears that there will be a stronger focus on the responsibility of the software developers, rather than the end users and their creation and therefore any IP legislation may be more strongly slanted in favour of the algorithm. There is precedent,

(76) *ibid* 48 [54, 55].

(77) TRIPS (The Agreement on Trade-related Aspects of Intellectual Property Rights), Annex 1C, WTO, 1994

(78) Sheehan [n 56].

however, for IP to cover computer-generated works, and for authorship to be transferred to the legal entity requesting the work. The significant difference is that currently China do not differentiate between AI-assisted and AI-generated work and considers it all AI-assisted, and therefore all applicable for copyright and authorship protection. The drive behind this seems to be to facilitate innovation in the area of AI and AI-generated work, within a utilitarian framework.

The UK's CDPA seems quite clear that work created by a computer is authored by the legal person who made the necessary arrangements for the work to be done. This strongly suggests the author to be the AI user, although there is room for discretion here. There is also potential for ownership, although not authorship, to be transferred to the legal entity employing the AI user and requesting the work. The omission of the "permission" clause potentially allows for IP laws which protect AI-generated material, possibly with the AI as an author, although without AI being able to accept legal responsibility this is still unlikely but may at least bring heavier weighting towards the parameter-setting user; the result leading to an overall more legally friendly environment for AI development, driving more developers to set up in the UK.

UK and China differ in their approach to authorship in several key ways. China does not currently differentiate between AI-assisted and AI-generated, with an aim to facilitate copyright protection of AI-based work and drive innovation. This is contentious as it potentially devalues non-AI utilising artists, which is at odds with China's strong copyright legislation to protect original authors and artists against non-consensual data-mining for AI learning. The UK government has encouraged legislation permitting data-mining of all accessible works, assuming "fair dealing", as learning material for AI. This is also contentious, with such data-mining leading to lawsuits in the US for copyright infringement. With regard to authorship rights, it is generally accepted that work must be human-made. The UK prioritises preventing others from profiting from the labour and skill put into works; thus, works must demonstrate originality, (human) skill and labour, whilst China requires evidence of "personality" to demonstrate originality.

Both nations accept AI-assisted work as human-authored and therefore protectable. If the work has been generated as a “work for hire”, i.e., for a company or employer, rights are transferable. In China authorship is transferable, as is, therefore copyright protections. In the UK authorship is not transferable from the original author however, ownership is, along with copyright protections. Many nations are conducting discussions to assess and amend legislation; the UK and China are no exception, and both are likely to undergo much change, depending on technological and economic developments and public opinion.

9. Recommendations

The United States’ white paper, the *Blueprint for an AI Bill of Rights*,⁽⁷⁹⁾ launched in 2022, is not a legally binding document, it is guidance. Whilst it does not look at Authorship and AI, its approach here is interesting. The world is currently in a state of flux regarding AI, it is a very new technology, at least in the form of widely available search engines programmed to “understand” a question and its framing, and then to return “unique, creative” works, in specific styles. We currently do not have a clear picture of how it will be used, or misused, in the near and long-term future, it would be, not only a challenge to set clear legislation at this point but six to twelve months down the line, it would likely not be relevant to how the technology is being utilised, if the laws were even effectively implemented at that stage⁽⁸⁰⁾. Some legal response is required for certain situations, such as the Chinese case of *Tencent v Yingxun*, and indeed there is an imminent need for such relevant changes to be effectively implemented globally. However, the US government may be attempting to prevent a similar situation whereby a lack of control has allowed social media platforms to take ownership of users’ data, and where that data has then been allegedly used to manipulate users and communities (Kogan, Cambridge Analytica and Facebook

(79) Office of Science and Technology Policy, *Blueprint for an AI Bill of Rights* (White Paper, 2022, The White House) <www.whitehouse.gov/ostp/ai-bill-of-rights/>.

(80) Daniel Malan, ‘The Law Can’t Keep Up with New Tech. Here’s How to Close The Gap’ *The World Economic Forum* (June 21 2018) <www.weforum.org/agenda/2018/06/law-too-slow-for-new-tech-how-keep-up/> accessed 28th July 2022.

data),⁽⁸¹⁾ but without rushing to push through legislation without round-table discussions including appropriate stakeholders and knowledgeable parties. Instead, as Elliott poses in his *Forbes* article,⁽⁸²⁾ it makes more efficient sense that the White House aims to help everyone understand what some of the more pressing issues may be and to gather and unify the relevant parties (judiciary, Federal Departments, lawmakers, local authority etc.). It also serves to initiate discussions, with an aim to observe and be able to respond quickly when the need arises but to respond clearly, from a place of knowledge and forethought and with a unified voice, one that does not hamper important developments. This is a sensible stance for all nations to take.

The ideal would be for nations to work together, whether the technology comes from individual start-ups or multi-national corporations, many in the field of IT work remotely and across national boundaries. It would be beneficial to have a global consensus to protect the work of both software developers and of the creative output generated by the imaginative parameters set by the user. Such software is a tool, and in the way that a photographer can copyright the result of their skilful use of a camera, AI users should be able to copyright or own Intellectual property of the work generated by strong AI software.

Regardless of nation, the current stance seems to be to establish laws around data handling and limiting AI usage for the purposes of security. China is also very heavily focused on limiting supporting citizens' capability to use AI to challenge the government. Despite several high-profile cases in recent years, for the time being China seems satisfied

(81) Federal Trade Commission, 'FTC Sues Cambridge Analytica, Settles with Former CEO and App Developer' (Press Release, July 24, 2019) <www.ftc.gov/news-events/news/press-releases/2019/07/ftc-sues-cambridge-analytica-settles-former-ceo-app-developer#:~:text=The%20FTC%20alleges%20that%20Cambridge%20Analytica%2C%20Nix%2C%20and,and%20share%20some%20of%20their%20Facebook%20profile%20data> accessed 28th July 2022; Part 3 Administrative Complaints, Cambridge Analytica, LLC, In the Matter of, FTC 182 3107 Docket Number 9383 FTC Matter/File Number 182 3107 Docket Number 9383, 2019.

(82) Lance Elliott, 'AI Ethics and AI Law Weighing Key Ways to Implement That Recently Released AI Bill Of Rights Including and Astonishingly By Using AI Outrightly' *Forbes* (October 13 2022) <www.forbes.com/sites/lanceeliot/2022/10/13/ai-ethics-and-ai-law-weighing-key-ways-to-implement-that-recently-released-ai-bill-of-rights-including-and-astonishingly-by-using-ai-outrightly/> accessed 27th July 2023.

with setting *Tencent v Yingxun* as a model case; Intellectual Property and authorship do not appear to be particularly high on the list at this early stage. Not to belie its importance, if the UK and China want to encourage AI innovation - and both seem keen on dominating that market – individual creators and companies will want their creations protected by law, and as it stands current Intellectual Property and copyright laws may or may not do this. This loophole could be the angle that allows another nation to overtake. China's reluctance to differentiate between AI-assisted and -generated is causing consternation among some, as it potentially devalues the definition of work and those who create without the means of generative AI. Those nations with natural law at the heart of their legislature, particularly those with a focus on author's rights, could take a strong stance against this kind of all-encompassing copyright protection. Considering Author's rights are common in civil law, and therefore dominant in the EU, the EU could have enough presence for this not to be the global stance.

Legislation takes time to effectively implement, it would be wise for governments to set up working committees of all poignant stakeholders now, to discuss likely issues and to be able to effectively respond to changing impacts and usage in a timely manner, and many nations are doing this. The UK and China are keen on developing supportive legislature to either develop and support home-grown talent in the area of AI, or to attract it from abroad, to boost their respective economies. However, a global convention also would seem efficacious, to protect all concerned, considering the overarching impact and interconnectivity of anything online, from end users of the created product, software designers, creators of the original material being sampled to learn from, and, of course, those creating via generative AI. There seems to be very little decided at this point in time, but there is likely to be much legislative evolution (Chinese legislation changed dramatically over just a few cases) as more cases are brought to court, as decisions from national conferences, observances from the committees are reported and as the legal understanding in this arena naturally evolves with its use. *Tremblay v. OpenAI, Inc*⁽⁸³⁾ and *Authors Guild v OpenAI Inc*⁽⁸⁴⁾

(83) Tremblay [n 1]

(84) Authors Guild [n 2]

demonstrate that there will likely be a strong pushback from artists to protect their original works. Whilst both China and the UK seem ahead in preparing the legal playing field for AI, AI has the potential to change things in unexpected ways; it just takes imagination and innovation. If a global policy is not on the immediate cards, it would be sensible for the GCC to collectively collaborate on a legal system, whereby a supportive legislature, alongside significant investment as part of R&D aspects of the Vision 2030 agendas could develop a strong competition for AI Innovation.

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نطاق حق المؤلف وتباين حقوق الملكية الفكرية للأعمال الابتكارية الناتجة عن الذكاء الاصطناعي دراسة تحليلية مقارنة بين المملكة المتحدة والصين

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ملخص الدراسة

في ظل طفرة الذكاء الاصطناعي، تتسابق الدول المتقدمة لإعادة تكييف نظمها القانونية لتواكب هذا الركب السريع، إذ إن معظم قوانين الملكية الفكرية بصورتها الحالية، قاصرة، وغير ملائمة لمواكبة هذا التطور. **الأهداف:** الإجابة عن التساؤلات الآتية: هل الأعمال الابتكارية الناتجة من الذكاء الاصطناعي محمية بحقوق ملكية فكرية ذات طابع معين؟ وإذا كان الأمر كذلك فلمن تعود ملكية حق المؤلف وحقوق الطبع والنشر عن هذه الأعمال؟ وما إطارها؟ وكيف يمكن حمايتها؟ تتنافس كل من المملكة المتحدة والصين على أن تصبحا رائدتين في تشريع قوانين جديدة لتنظيم حقوق الملكية الفكرية للذكاء الاصطناعي، في حين تعاني معظم الدول -حتى الآن- فراغاً تشريعياً في هذا الموضوع، فحتى الآن أصدرت الصين حزمة من القوانين لإخضاع أعمال الذكاء الاصطناعي لحقوق ملكية فكرية ذات طابع خاص، ولكن الحال مختلف في المملكة المتحدة؛ إذ يشترط القانون نقل هذه الملكية إلى كيان قانوني منفصل وبشروط معينة قبل الاعتراف بحقوق المؤلف. ومما لا شك فيه أن كلاً من النظامين يسعى جاهداً إلى إيجاد حلول مبتكرة وسن تشريعات بصورة سريعة لحفظ هذا الحق وحمايته. وفي بحثنا هذا نجتهد لمعرفة لمن تعود حقوق الملكية الفكرية -وحق المؤلف تحديداً- للأعمال المبتكرة بوساطة الذكاء الاصطناعي؟ وما إطارها؟ وكيف يمكن حمايتها؟ بتحليل الفرق بين النظامين القانونيين، وذلك عبر دراسة تفصيلية مقارنة. **المنهج:** تحليلي نقدي مقارنة. **النتائج:** التوصل إلى تبني أسس علمية قانونية مبتكرة لتحديد إطار نطاق مفهوم الملكية الفكرية ليتسع ليشمل المحتوى المتجدد الذي يتم إنشاؤه بوساطة الذكاء الاصطناعي. **الخاتمة:** تخلص الدراسة إلى أنه مع استمرار تطور الذكاء الاصطناعي، فإنه لا بد من خلق حلول تشريعية جذرية لسد هذه الفجوة التشريعية لتواكب هذا التطور السريع .

الكلمات المفتاحية: قانون الملكية الفكرية - حقوق المؤلف - الأعمال الابتكارية - الحق المالي للمؤلف - الذكاء الاصطناعي.

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