

Beijing Internet Court grants copyright in an AI-generated image to the user who prompted it

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Key contact

Shanghai

Dr. Ulrike Glück

Managing Partner

Rechtsanwältin | Chief Representative | Head of Corporate Practice Area Group, Head of TMC Sector Group

Li v Liu, 27 November 2023 Court Beijing Internet Court Country PRC (Mainland China) Parties Claimant: Li
Defendant: Liu

Date Case Filed 25 March 2023 Type of Claim Copyright infringement Date Judgement issued 27 November 2023 Summary of Key Background Facts The claimant generated the image in question using open-source software and published it on one social media platform. The defendant published an article on their social media account on another platform, using the image in question as an accompanying illustration without the plaintiff's permission and cropping out the plaintiff's attribution watermark. Remedies sought The claimant sought the following remedies: Remove infringing videos; Prominently display a publicly issued apology statement within the applet for one consecutive month; Compensate the plaintiff for economic losses.

Summary of key legal arguments Claimant: 1. The image in question is copyrighted work Model selection and acquisition : The claimant independently selected the AI model based on aesthetic preferences. Prompt input : The claimant crafted and entered specific prompts, including reverse prompts to exclude certain elements, reflecting their creative judgement and design. Generation parameters : The claimant determined parameters such as sampling methods and guidance coefficients through repeated experimentation, demonstrating

intellectual effort and originality. Based on the above, the claimant claimed that image in question therefore constituted an original intellectual creation and is therefore protected under copyright law. 2. The defendant infringed the claimant's right of authorship and information network transmission right. The defendant, without authorisation, removed the claimant's attribution watermark and disseminated the image, misleading users into believing the defendant was the author. This infringed the claimant's rights of authorship and dissemination via information networks. Defendant: The defendant merely argued that AI-generated images have low market value and did not present any substantive defence. Court's opinions: 1. AI-generated works should be recognised as copyrighted works and protected under copyright law, provided they demonstrate original intellectual input by a human. AI-generated works may be protected under copyright law if they reflect original human intellectual input. Unlike commissioned artists, AI lacks free will and legal subjectivity. Therefore, the creative input must be attributed to the human configuring and directing the AI tool. 2. The images in question constitute works of fine art and are protected under copyright law. Intellectual achievement The image was not sourced from existing stock or pre-set templates. The claimant's involvement—from conceptualisation to prompt design and parameter setting—demonstrates intellectual input. Originality The claimant refined the image through iterative prompt and parameter adjustments, reflecting personal aesthetic judgement. The process differs from mechanical or formulaic outputs, and the final image embodies the claimant's unique expression. 3. The plaintiff holds the copyright but should prominently label the AI technology or model employed. The claimant, having directly configured the AI model and selected the final output, is the author and copyright holder of the image. However, in line with the principle of good faith and the public's right to know, the claimant is obliged to clearly indicate the AI technology or model used in the creation process. Judgement: The defendant shall publish an apology to the plaintiff on the social media account in question, maintaining it for no less than 24 hours to mitigate the impact, and shall compensate the plaintiff for economic losses.

CMS Comment This case has been selected as one of the 2023 Top Ten Representative Cases of the Beijing Internet Court.

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