



RESEARCH ARTICLE

THEORETICAL CONTROVERSIES OVER THE ORIGINALITY STANDARD FOR AI-GENERATED CONTENT AND THE CHINESE APPROACH

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ARTICLE INFO	ABSTRACT
<p>Submission Jul., 28, 2025</p> <p>Acceptance Aug., 01, 2025</p> <p>Keywords</p> <p>AI-generated content; Copyright; Originality standard; Anthropocentrism; Chinese approach</p> <p>Corresponding Author</p> <p>wjoneie@foxmail.com</p>	<p>The discourse surrounding the standard of originality has long been divided into two schools of thought: subjectivism and objectivism. Subjectivism emphasizes the participation of natural persons in the creative process, whereas objectivism focuses on the distinctiveness of a work's expression. Through a historical examination of the originality standard and a comparative analysis of judicial practices across multiple jurisdictions, it becomes evident that "anthropocentrism" imposes functional constraints on the copyright system and that a mechanistic application of objectivism may result in ethical risks. Neither school of thought can independently address the originality issues arising from AI-generated content. Therefore, drawing on the integrative tendencies demonstrated in current Chinese judicial practice, this paper advocates for a primarily objectivist judgment framework, supplemented by elements of subjectivism. The proposed framework bases its evaluation on the distinctiveness of the result and the novelty of expression, while incorporating a human intervention factor to introduce value judgments rooted in subjectivism. This approach not only enables the copyright system to fulfill its institutional functions and social values simultaneously, but also offers insights for the collaborative global governance of copyright.</p>

1. INTRODUCTION

Since 2022, the total number of images generated by artificial intelligence (AI) models such as Stable Diffusion and Midjourney has exceeded 15 billion(Valyaeva, 2023), surpassing the total output of human photographers over the past two centuries. Artificial Intelligence Generated Content (hereinafter referred to as AIGC) is posing challenges to the copyright system. At present, judicial opinions differ on whether AIGC meets the standard of originality, leading to various debates. The divergence in viewpoints is related both to the originality standard itself and to the

differences between subjectivist and objectivist interpretations of originality. As the originality standard plays a fundamental and essential role in determining whether a creation qualifies as a "work," it is necessary to assess whether AIGC satisfies the originality requirement, assuming it is eligible for copyright protection. Furthermore, when the form of expression of AIGC is identical to that of human-created works, if AIGC cannot be recognized as a work under copyright law, there is no need to further consider the attribution of authorship or ownership of copyright in AIGC (Wang, 2017). Therefore, it is both necessary and beneficial to explore the originality standard for AIGC, which will also contribute to the unification of theoretical and practical approaches to its assessment.

2. PROBLEM STATEMENT: HOW SHOULD THE ORIGINALITY STANDARD RESPOND TO AIGC?

The interpretation of the originality standard is divided into subjectivism and objectivism (Yang & Wang, 2024). These two standards stand in equal opposition, and each emphasizes different aspects. Interpretations based on the two standards will lead to different conclusions regarding the originality of AIGC. Subjectivism compares the process of generating AIGC with the process of human creative activity, and analyzes whether AIGC meets the originality standard (Wang, 2017). Subjectivism holds that "a work is a representation of the author's subjective conception" (Yang, 2007), emphasizes the dominant role of the author in the creative process, and thus leads to the conclusion that AIGC does not meet the originality standard, and even lacks copyright eligibility.

Internationally, the question of whether AIGC can be protected under the copyright system is also frequently approached from this perspective. For example, when the U.S. Copyright Office refused to register *Théâtre D'opéra Spatial* (U.S. Copyright Office, 2023), it reasoned that the AIGC in question lacked the human intellectual input and original expression required in the creation process. Similarly, when *Zarya of the Dawn* (United States Copyright Office, 2023) was submitted for copyright registration, the U.S. Copyright Office repeatedly emphasized the importance of human participation in the process.

In line with the U.S. perspective, the Czech case of *S. Š. v. TAUBEL LEGAL and advokátní kancelář s.r.o.* (The Municipal Court in Prague, 2023) resulted in the court's conclusion that the image in question did not exhibit intellectual creative activity by a natural person, as the plaintiff failed to meet the burden of proof regarding authorship and the creation process. Therefore, the work was held not to meet the originality requirement and was not recognized as a copyrightable work. In the Italian case of *RAI Radiotelevisione v. Chiara Biancheri* (Biancheri v. Rai-Radiotelevisione Italiana S.p.A., 2024), the court confirmed that the mere use of a creative tool does not disqualify a work from copyright protection and recognized the human author's creative contribution as the core evaluative criterion.

This can also be attributed to the theoretical tradition of natural law in the West. Judicial practices in the United States and European countries, influenced by natural law, emphasize that "personality constitutes the basis of property rights" (Hegel, 1961/1820), that "property is the embodiment of personality", and that "when a person mixes their labor with something held in common, it becomes their property" (Dehousse, 2017, p. 70), placing significant weight on human control over the creative outcome.

It is not difficult to observe that different legal systems share certain commonalities in their treatment of the originality standard. At least among countries deeply influenced by natural law, there is a general consensus that the essence of the copyright system remains the encouragement and reward of human creativity. The originality standards adopted still contain an expectation centered on the author, implicitly shaped by anthropocentric thinking (Li, 2013, p. 130).

However, within objectivism, there exists a tendency to adopt a "work-centered" approach, wherein the independent and final work serves as the sole object of assessment under the originality standard, excluding the influence of the author and the creative process (Yang, 2007). For instance, the United Kingdom continues to apply its traditional "skill, labour and judgment" standard, and affirms the copyrightability of AIGC even when lacking human author intervention (Copyright, Designs and Patents Act, 1988, § 178).

In China, both subjectivist and objectivist standards have been applied in judicial practice, but policy developments have signaled a shift—such as the call to "strengthen intellectual property protection in new fields and new business models" (Economic Daily, 2021)—indicating an increasing tendency to adopt the objectivist originality standard. As a result, Chinese judicial practice places greater emphasis on the social value of intellectual achievements and comparatively weakens the absolute constraint of personality over the nature of the work. For example, in the Chunfengtu case (Beijing Internet Court, 2023), the court held that user actions such as adjusting parameter instructions were sufficient to constitute individualized expression, thus meeting the originality standard.

This reasoning reflects a utilitarian tendency within the Chinese copyright system (Dai & Jin, 2023): when the outcome contributes to public interest or creative development, it may be eligible for copyright protection. This approach aligns with the views of some Chinese scholars (Wu, 2024); (Cong & Li, 2023), and has been adopted in subsequent cases (Wuhan Donghu New Technology Development Zone People's Court, 2024); (Changshu People's Court, 2024).

However, it must be noted that current judicial practice in China still reflects a degree of compromise regarding the status of AIGC. In China's first case involving an AI-generated article, the Tencent Dreamwriter case (Nanshan District People's Court, 2019), the court acknowledged that the generated content met the originality standard but denied its status as a copyrightable work because the author was not a natural person.

The academic community has also questioned the logical soundness of categorizing Artificial Intelligence (AI) simply as a tool, and argues that an overly lenient originality standard may lead to an imbalance in rights protection (Wang, 2024).

Thus, globally, two major trends have emerged regarding the originality standard for AIGC: one emphasizes the human-centered creative process—namely, subjectivism—while the other prioritizes the appearance of the final output—objectivism. The former stresses the "control" that a natural person exercises over the work, whereas the latter focuses more on the objective originality of the work itself. These divergent approaches stem not only from the differing interpretations of originality within various legal systems, the value preferences shaped by cultural foundations, and the uncertainty of AI technology development, but also from a deeper issue: the lag and lack of adaptability of the copyright system, as a core institution of intellectual

property, in the face of technological change.

The traditional copyright regime rests on a moral foundation of anthropocentrism, rendering its established originality standard incompatible with the entirely new modes of creation enabled by AI technology. On the other hand, completely removing the human factor and allowing technology to fully dictate the allocation of rights (McPherson, 1983) risks falling into a zero-sum logic that neglects the normative function of copyright law in guiding technological development and undermines the law's capacity for value judgment.

How, then, should the originality standard adapt to this new context of AI's deep involvement in the creative process? The answer requires breaking away from the binary thinking of "human versus machine," tracing the historical origins of the originality standard to uncover foundational answers, identifying the reasons behind the divergence between subjectivism and objectivism, and rising to meet the challenges that AI presents to the contemporary copyright system.

3. ANALYSIS OF THE ISSUE: FROM HISTORICAL ORIGINS TO THE TWO SCHOOLS OF THOUGHT

Looking back at the course of history, the copyright system has always experienced certain major transformations in response to technological change. Accordingly, the controversy surrounding the originality standard triggered by AIGC is not an isolated theoretical disturbance. Each time a new technology emerges, whether it is the printing press or the digital video recorder, it presents legislators with a choice. Legislators may choose to expand copyright in order to allow authors and publishers to capture the full market value of their works, or they may choose to limit copyright so that the public can obtain the right to use works freely under the new circumstances. (Gostin, 2023, p. 24) Similarly, each wave of technological change also brings renewed reflection on the meaning of "creation" and the criteria for what qualifies as a work. As the threshold for determining the eligibility of a work, the originality standard mirrors the evolution of both the moral assumptions and the functional mechanisms of the copyright system.

3.1. The Logical Regression of the Originality Standard

Even the earliest legislation enacted for the benefit of authors, the Statute of Anne of 1710, was closely tied to the rise of the printing industry. The author existed as a "symbol" within the process of legitimizing copyright rights and only served to establish the starting point of a work. With the emergence and flourishing of Romanticism in the eighteenth and nineteenth centuries, authors acquired a "genius-like" status based on the theory of natural rights, and creative acts were elevated to the status of external expressions of individuality, emotion, and will. After establishing the central role of the natural person as author, judicial practice developed requirements concerning originality, drawing a boundary between the public domain and private rights. The originality standard was subsequently established as an important criterion for determining whether something constitutes a work. Its core lay in manifesting the spiritual world of the natural person author, and it embedded a strong anthropocentric tendency. However, at that time, the originality standard demanded complete human intellectual labor. When confronted with technological interventions in the creative process, such as photography and videography, the copyright system made adaptive adjustments. The nineteenth-century United States case *Sarony (Burrow-Giles Lithographic Co. v. Sarony, 1884)* confirmed that photographs

could also be original works because the photographer demonstrated "choice and judgment" in aspects such as composition, lighting, settings, and posture, thereby satisfying the originality standard. This case illustrates that the copyright system's understanding of "creation" is not immutable. It treats selectivity, differentiation, and individualization in technical operations as an extension of human creative activity, thereby broadening the interpretation of originality. This grants the originality standard a certain degree of institutional flexibility, allowing it to maintain an author-centered premise even as new modes of creation emerge. In the twentieth century, the copyright system increasingly exhibited a utilitarian orientation. The rapid increase of commercial works, popular culture, and media industry content gradually shifted the originality standard away from emphasizing complete human intellectual labor towards emphasizing differences in the expression of creative results. Even in the United Kingdom, the birthplace of author-centered copyright, historical developments have included perspectives holding that the value of a work lies in its contribution, in terms of knowledge and progress, or gross national product or productivity. (Sherman & Bentley, 2012, pp. 207–208) The functional interpretation of copyright law has also tended more towards the goal of encouraging the creation of literary, artistic, and scientific works (Zhao, 2011), emphasizing the realization of the value of copyright. This shift focuses on examining more objectively whether a work reflects the intellectual input of its author, demonstrating a results-oriented approach that essentially represents the originality standard's convergence with objectivism. From an institutional logic perspective, this adjustment reduces the cost of judicial determination and enhances the practicability of judicial practice. It is reasonable to make such adjustments to respond to new modes of creation in modern cultural production that feature depersonalization trends such as collective creation and industrialized processes. This utilitarian tendency has also allowed the copyright system to shed some of its anthropocentric characteristics and gain greater inclusiveness, enabling the system to maintain relatively consistent applicability in new types of works such as films, games, computer programs, and databases.

The development of AI technology and its application in fields such as image and text generation have once again placed the copyright system at a crossroads. The subjectivist view holds that the generation of AIGC relies heavily on the level of training of the model and the computational capacity of the algorithms. Although the final outputs may appear novel and diverse in form, it is difficult to identify any human creative intent within them. As a result, both core elements of the originality standard, namely "subjective independence" and "personalized expression", encounter significant challenges when applied to AIGC. This is evident not only in the cases of *Théâtre D'opéra Spatial* (U.S. Copyright Office, 2023), *Zarya of the Dawn* (United States Copyright Office, 2023), and *A Recent Entrance to Paradise* (U.S. Copyright Office, 2022), but also in the *SURYAST* case (U.S. Copyright Office, 2023). The U.S. Copyright Office has repeatedly denied copyright protection to AIGC in these instances, each time emphasizing the essential role of human participation in the creative process. This indicates that the subjectivist originality standard continues to exert considerable influence.

In contrast, China has adopted a different approach. In the case of *Spring Breeze Painting* (Beijing Internet Court, 2023), as well as in subsequent cases such as the *Wuhan AIGC copyright infringement case* (Wuhan Donghu New Technology Development Zone People's Court, 2024), China became the first country to recognize AIGC as a work. China has taken a broader

view than other jurisdictions regarding the requirement of human involvement in the creative process. Although this objectivist-leaning standard remains in its early stages and lacks a unified consensus, a review of the formation and evolution of the originality standard shows that originality does not inherently represent a fixed value proposition (Dai & Jin, 2023). Rather, it should be understood as a technical rule for determining the allocation of rights.

Copyright originated from commercial needs and has become increasingly intertwined with trade as society has developed. Furthermore, as a form of limited monopoly, copyright has been subject to criticism since its inception due to its relatively weak exclusivity and its encroachment upon the public domain. Authors have long complained that the copyright system fails to offer strong protection and tangible benefits, while members of the public argue that it widens the knowledge gap between privileged and disadvantaged groups. If the copyright system cannot adapt to continually changing methods of creation, these criticisms will only intensify.

Against this backdrop, the focus of the originality standard should not remain solely on the author's intellectual labor or merely emphasize the author's individual imprint and artistic character. Greater attention should instead be given to the social value generated by the dissemination of the work, particularly its contribution to the collective body of human cultural and artistic output. Therefore, when confronting AIGC, the copyright system must seek to establish a new equilibrium. Only by ensuring sufficient inclusivity can it preserve its institutional legitimacy.

3.2. Subjectivism: "Author-Centered"

The research method explains the implementation methods employed in the study. The method is described clearly and in detail [STIX Two Text-Medium 12 font, normal]The author's position as the central figure of rights within the copyright system originated with the Statute of Anne and was subsequently justified through natural rights philosophy, based on the philosophical categories of "will-personality-property" to legitimize copyright property rights. (Wu, 2003) This author-rights system embraces a romantic author concept that is "author-centered," viewing literary works and other creations as "natural vessels of personality" (Hughes, 1988), emphasizing that works require human "mental input" and "expression of individuality." Regarding this theme, respecting the subjectivist originality standard and reflecting the author's unique personality, creative intention, and sources of inspiration are essential. However, meeting this standard is not difficult. Any work independently created by a human author without copying or plagiarism from other works is acceptable under the subjectivist originality standard. The originality standard under subjectivism effectively relies on constructing an author's subjective world entirely independent from the objective world, allowing the author to "create something out of nothing" through the act of creation within this subjective world. The essence lies in the fact that the work's emergence depends on the creative process of the subject, imprinting the work with the creator's unique style and characteristics. The work is therefore a "representation of the author's subjective conception" (Yang, 2007).

When machines generate content through a pathway different from human creativity by using algorithms to create new combinations based on existing data (Aslan, 2024) and reproduce human creation, has the legal concept of the originality standard become mere romantic rhetoric? Scholars who hold the subjectivist perspective often analyze the issue of originality standards for

AI-generated content without considering the subject as a premise, thereby avoiding logical circularity and focusing instead on the process of generating the relevant content (Wang, 2017). Therefore, criticisms of AI-generated content frequently appear in subjectivist scholars' discussions who regard it as simply the result of applying certain algorithms, rules and templates (Wang, 2017). They also emphasize the irreproducibility of human creative acts because even the most talented creators cannot replicate their own creative process, and the knowledge produced possesses an inherent scarcity (Yang & Chen, 2016). Since a work originates from an author's independent and highly individualistic creation, the intellectual labor invested is inevitably connected to the final outcome. This distinction separates the creative act under copyright law from labor in the general sense. Therefore, the process of AI-generated content creation is considered by subjectivist scholars as merely following predetermined procedures according to terms and obtaining definite results through algorithms. Anyone performing the same operations would achieve identical outcomes, which fundamentally differs from intellectual creation that reflects the author's individuality and irreproducibility. AI's learning ability marks a significant difference from other technological advances since it optimizes methods through self-play, similar to human thinking (The technological journey after "AlphaGo", 2016). However, this progress means only that AI can analyze data through algorithms to find the optimal strategy and then produce the best possible result within its computational scope using that strategy. Because this algorithm-based strategy search process is involved, the search results lack personalized features and cannot escape a high degree of reproducibility. In contrast, human authors maintain control over the language of the work when processing original materials due to their unique personality, emotions, fleeting inspirations and creative methods with minimal intervention (Li, 2025). They thus master their creative acts, and the results of those acts are unique. AI-generated content has sparked discussion only because the algorithms behind AI are sufficiently complex and advanced to give the public the illusion that machines are capable of creation.

In summary, subjectivism has its rational basis in determining whether AI-generated content meets the originality standard. Although AI-generated content is excluded from copyright protection under subjectivism because it lacks the personalized expression of a natural person, it is precisely the emphasis on the subjectivity of the author and the uniqueness of creation that has broadened the scope of the subjectivist standard. As a result, even works by natural persons that are extremely ordinary, extremely banal, or highly commercial can receive extensive copyright protection. A historical review reveals that subjectivism has been instrumental in the continuous expansion of the scope of protection under the copyright system over the past nearly three centuries. It is worth mentioning that although the public domain is often overlooked, it remains a general concept in intellectual property law (Oddi, 2002). As the scope of protected subject matter expands, the works in the public domain inevitably diminish. If subjectivism is applied indiscriminately in the copyright system, it will lead to serious erosion of the public domain and fail to achieve the copyright system's fundamental purposes of protecting innovation and knowledge. Moreover, the "anthropocentrism" proudly upheld by subjectivism has long shown its drawbacks, which have become increasingly pronounced with the passage of time. The emergence of copyright relied on the development of modern social structures and cultural concepts. Although the Statute of Anne established copyright law centered on the author's rights, the reason the author was chosen by the system as the rights holder was because printers required a stable and transferable right, which also needed a clear and generally accepted starting point.

Compared with royal privileges, the author was more socially acceptable (Li, 2013, pp. 61, 70, 130). It can be said that the copyright system has served market expansion needs since its inception. With the acceleration of industrialization and capital expansion, human labor has gradually been "outsourced" to machines as technology develops. When photography and cinematography emerged, they were described as "human hands no longer participating in the main artistic tasks of image reproduction" (Benjamin, 2017, p. 65). The impact this had on the copyright system closely resembles that of today's AI. Whether creation with reduced human participation still qualifies as creation was affirmatively answered by earlier copyright law. The United States Copyright Act of 1790 (U.S. Copyright Office, 1790) adapted to market development by expanding protection from "maps, charts, and books" to include musical compositions and photographic works, thus enabling the copyright system to respond to emerging changes and new things. The important function of the concept of "creation" is to establish ownership (Li, 2019). Therefore, as long as the originality standard in copyright law is sufficient to establish a specific connection between the work and the subject and indicates that the work originates from the subject, it is acceptable (Li, 2019).

In conclusion, subjectivism continuously emphasizes the indispensability of humans in creation and strives to build protection for human authors' rights. However, the copyright system itself is inseparable from commercial needs and cannot avoid influence from market and other economic factors. Therefore, in an era where new things constantly emerge and modes of creation are to some extent reshaped, it is certainly worthwhile to discuss whether the creative outcomes of natural person subjects can continue to serve as the sole legitimate object of the copyright system.

3.3. Objectivism: "Work-Centered Approach"

Although it cannot be denied that "intellectual labor is the most influential organizing principle of pre-modern intellectual property law" (Sherman & Bentley, 2012), with the development of modern and contemporary economies as well as science and technology since the second half of the nineteenth century, intellectual property legal systems, including copyright, have gradually shifted their focus from intellectual labor and human creativity to the creative results themselves. Objectivism, which concentrates on the work itself, has thus entered public awareness. The objectivist originality standard that focuses on the work emphasizes that whether the standard of originality is met should be judged from the external appearance of the work. In contrast to subjectivism, objectivism excludes the author's personality, creative intention, subjectivity, and creative process from the evaluation system. It also advocates a postmodern structuralist philosophical perspective that is "reader-centered," focusing on whether the creative result meets the originality standard from the viewpoint of the "ordinary reader." Therefore, objectivism is more comprehensively described as "work- and reader-centered." However, in order to highlight the differences between the two perspectives in comparison, subjectivism is described as "author-centered," while objectivism is described as "work-centered."

Since creative activity is a factual act and the results of such activity have ultimate and fundamental significance, it is reasonable to judge the logic of the act based on the factual outcome. One of the advantages of objectivism lies in its ability to rapidly form judgments on whether a creative result qualifies as a work through a logical process. The gradual application of

the "idea-expression dichotomy" in judicial practice exemplifies objectivism by weakening the causal relationship between the author and the work. (Lin & You, 2018) In the "Spring Breeze" case, the court's judgment on originality was that it "should be based on whether the work was independently created and whether there is a certain degree of difference in external form compared to existing works" (Beijing Internet Court, 2023). It is evident that the court's approach leans toward objectivism, as it does not connect subjective factors such as the creator's personality or intent with the originality standard, instead focusing more on the external form of the work. Compared to the romantic author-centered view of subjectivism, which requires judges to explore the author's mental world from the author's perspective to reconstruct the creative process, this latter perspective tends to evaluate originality based on the creative process and may fall into subjective aesthetic judgments concerning beauty or ugliness. Such an approach tends to overlook changes in new works and their contributions to aesthetic value. On the other hand, from the ordinary reader's perspective, one can focus "more on whether the new work provides a spiritual enjoyment or other social values different from the original" (Lu, 2020). This viewpoint provides a clearer and more reasonable positioning, allowing for an unbiased, direct, and straightforward consideration of whether there are significant differences between works and whether the new work meets the originality standard. The advantage of objectivism lies in its ability to make simple judgments based on clear standards, which is especially suitable in contexts where technological intervention in creation is increasingly common. For new forms of "human-machine collaboration" such as AI-generated content, objectivism offers a more inclusive institutional recognition logic that frees copyright attribution from the constraints of human creative will and provides flexible space for technological evolution.

However, if the judgment of works excessively relies on "differences" in the work itself, this may lead to a mechanical judgment logic that neglects creative ethics and social value. This could accelerate the transformation of the copyright system into a tool that protects all identifiable content, ultimately making it difficult to maintain the moral legitimacy of the system. Moreover, if the creative process is entirely excluded from consideration, technologically generated content and human original works would receive exactly the same status, which would also damage the fairness of the system and run counter to the institutional goals aimed at realizing social value. The evaluation of works cannot rely solely on consequentialism (Li, 2019). Even if the influence of "human centrism" is completely excluded, the public still has the right to know whether a work originates from a natural person because readers have the desire to communicate with authors through their works. Social and cultural communication, critique, and research cannot entirely detach from the analysis of the author. There exists such an inherent connection between humans and works, and the reasonableness of subjectivism must be incorporated into considerations of the originality standard.

4. PROBLEM RESOLUTION: RECONSTRUCTION OF THE ORIGINALITY STANDARD DETERMINATION

"Artificial intelligence has opened an unprecedented window of opportunity" (Zhang, 2025). In the field of copyright, the controversy over the originality standard for AI-generated content (AIGC) has in fact long surpassed a mere technical issue confined to any single jurisdiction. Since the advent of AI, countries around the world have successively formulated their own artificial intelligence strategies, treaties, and regulations. However, these strategies generally focus only

on the interests of their own country or region. Although such localized development is crucial, there remains a lack of capability to address global risks and challenges and to ensure the sustainable development of AI technology (Roberts, Hine, Taddeo, & Floridi, 2024).

When addressing the issue of originality in AIGC, most countries focus on questions such as "whether human creative intervention exists" or "whether the work exhibits differential expression." While these perspectives have their own rational basis, differences arise from distinct legal traditions, cultural foundations, and governance philosophies. As a result, countries differ in their application and lack a foundation for consensus.

Yet copyright systems, which emerged alongside the evolution of industrial structures and cultural concepts (Li, 2013, p. 61), play an important role in social industrial development and cultural production across nations. Therefore, facing AIGC as a new phenomenon and its vast, emerging market, the uncertainty surrounding the copyright status of AIGC is highly detrimental to economic, cultural, and other aspects of development. Whether individuals and enterprises using AI, or companies building large AI models, can receive positive feedback from the copyright system (such as economic benefits) is not only a matter of individual property rights but also a primary concern for the development of entire industries and society.

In today's deepening globalization, the interdependence among nations is increasingly close. Given the significant cross-border effects of artificial intelligence, even though legal systems, legal sources, and legal families differ, national attitudes toward AIGC will affect other countries. Therefore, addressing the question of AIGC's originality standard requires "collaborative governance" to identify the "greatest common denominator" through seeking consensus while preserving differences, thereby promoting the development of national copyright systems and enabling AI technology to benefit humanity.

4.1. Insights from the Chinese Approach to Collaborative Governance

In the reality where multiple obstacles still exist in constructing a globally unified originality standard, China, lacking a tradition of natural law, is neither a copyright-centric country nor an author's rights-centric country (Dai & Jin, 2023). The overall copyright system is deeply influenced by utilitarianism. Consequently, in judicial practice regarding AIGC, China exhibits a tendency toward hybridization, focusing more on whether the protection of AIGC promotes public interests while placing the value of "human participation" in a relatively less important position.

On one hand, cases such as the "Spring Breeze" case (Beijing Internet Court, 2023) emphasize inferring the presence of individualized expression through user instructions. Although superficially closer to subjectivism, in reality, this approach emphasizes the difference between the creation and existing works, representing a "localized" application of objectivism. On the other hand, the Tencent Dreamwriter case (Guangdong Shenzhen Nanshan District People's Court, 2019) demonstrates a hesitant attitude. While the court affirmed that AIGC can possess originality, it rejected AIGC as a work on the basis that "non-natural persons do not qualify as authors," revealing a coexistence of subjectivist and objectivist logics.

China may in the future no longer recognize AIGC as a work, but from another perspective, this diversity during the transitional period can provide an experimental space for constructing a

more inclusive recognition pathway. Institutionally and culturally, since the establishment of its copyright legislation, China has long emphasized the social utility of copyright and its role in promoting the cultural industry, placing greater importance on the promotion of cultural development, technological innovation, and public interest by creative outputs. Moreover, as AI is a new phenomenon with strong development potential, China, influenced by utilitarianism, is more inclined to recognize such non-traditional subjects.

This interpretative logic may also exert potential influence on East Asian countries with similar cultural traditions as well as developing countries—if recognizing the originality of AIGC at this stage is beneficial to fostering the AI industry within their own countries or regions, and can enable them to gain unprecedented advantages in the new industrial revolution, then driven by such interests, China's interpretation of AIGC originality may gain wider acceptance.

Most countries and regions affirm that originality is a prerequisite for copyright protection (Olson, 1983). This shared understanding forms a possible foundation for achieving consensus among nations on issues related to AI-generated content (AIGC). Even countries with a strong tradition of natural law and a high emphasis on personality rights theory must face the challenge of balancing the legitimacy of the copyright system with the promotion of innovation and encouragement of creativity in an era where AI technology intervenes in the creative process and the concepts of author and work become increasingly blurred.

Taking the United States as an example, the Feist case (Feist Publications, Inc. v. Rural Telephone Service Co., 1991) established that a work must possess at least some minimal degree of creativity and that originality requires independent creation plus a modest amount of creativity (Hughes, 2021). Although the U.S. viewpoint still centers on human authorship, its practical examinations also reveal attention to the value of creative outcomes.

Meanwhile, certain European courts have emphasized in their rulings the connection between creative acts and society, demonstrating that subjectivism and objectivism are not absolutely opposed but allow for flexible interpretation and extension. Even proponents of the so-called "absolute control" theory have shifted from outright rejection toward gradual acceptance (Jiang, 2025).

The fusion tendency revealed by the Chinese approach exemplifies an exploratory "middle path" among these phenomena. China's judicial practice in interpreting AIGC originality, by emphasizing social function and public interest orientation, also provides useful supplementation to legal systems deeply rooted in natural law.

Moreover, the significance of the Chinese approach lies not in exporting a model to replace others, but in inspiring countries to engage from their own systems in jointly exploring the legal boundaries of "creation" and the inclusiveness of copyright regimes. This offers a more constructive and inclusive institutional framework for the future governance of copyright.

4.2. Objectivism as the Main Axis, Subjectivism as a Supplement

Which is superior, subjectivism or objectivism? In fact, both have their respective advantages and disadvantages, making it difficult to rank them definitively. There have also been views questioning the practical utility of the originality standard itself (Zhao, 2011). If the issue of

originality is approached with an absolute subjectivist standard, it contradicts the "idea-expression dichotomy" in copyright law (Lu, 2020). Since copyright law only protects expressions that meet the originality standard, a lack of creative space during the creative process (for example, when AI generates content solely based on operator prompts) does not necessarily lead to the conclusion that the creative result lacks originality. On the other hand, adopting an absolute objectivist standard may foster mechanical result-orientation and lead to an improper expansion of the scope of protectable works. Many viewpoints (Huang & Huang, 2019); (Xie & Chen, 2019); (Ding, 2023) argue that more attention should be paid to the objective creativity of AIGC works. However, judgment of works cannot be made solely from an objectivist perspective; even when moving beyond "human centrism," the legal significance of the association between works and humans should not be neglected (Li, 2019). Therefore, a reasonable approach to resolving the originality standard issue for AIGC should be led by objectivism, using quantifiable criteria such as distinguishable differences in the final appearance and novelty of the work as the core basis of judgment. Subjectivism should serve as a fallback principle to prevent ethical lapses and cultural alienation caused by mechanically applying objectivist standards.

First, the fundamental logic for judging originality should be whether the work exhibits an identifiable, distinguishable expression. For a preliminary judgment of AIGC, the focus should be on whether the presented result exhibits structural changes, semantic innovation, or independence in aesthetic expression. If the AIGC work is sufficiently distinguishable from existing works and demonstrates a certain degree of novelty in expression, it can be preliminarily recognized as meeting the originality requirement. This allows AIGC to pass the initial threshold of scrutiny. Such logic not only enhances operability in judicial practice but also avoids the complexities and difficulties of tracing the creative process. It effectively responds to the reality of modern creation, which is highly automated and collaborative with technology. In judicial practice, Chinese courts have, in fact, preliminarily formed a "prompt design plus parameter adjustment" judgment criterion. When the user's input prompts possess a certain degree of directive character and, after multiple instructions and parameter adjustments, reach a certain threshold, AIGC can be recognized as meeting the originality requirement. Criticisms of such criteria generally stem from concerns that human participation is too limited, but these concerns can be addressed by setting appropriate thresholds.

Although AI's independence in the creative process is increasingly enhanced, completely excluding human participation remains inadvisable. Human legal systems are also incapable of regulating objects that exist without any human presence. From another perspective, the core value of subjectivism lies in maintaining the responsibility foundation and the boundary of rights in creative acts. For example, the paradox of the open-source model is that this model relies on copyright law to remain free. Only by ensuring copyright protection can arbitrary claims on ownership of improvements be prevented (Gostin, 2023, p. 290). The same applies to AIGC. If AIGC contains a certain degree of innovation, that part of the innovation requires protection under copyright law. Therefore, when there is significant controversy or ethical risk regarding AIGC's originality, subjectivism should be introduced as a "fallback clause" to evaluate the extent of human involvement in the creative process. Specifically, three influencing factors may be set: whether the design of the prompts or the setting of parameters is highly individualized and decisive for the final form of the AIGC output; whether the human operator has engaged in

multiple rounds of interaction, revision, and selection to shape the style of the work; and the degree to which AI technology is irreplaceable in the creative process. When these influencing factors are strong, the intervention of subjectivism may be considered. Some scholars have already constructed detailed human intervention models for judicial practice (He & Deng, 2021), which categorize human subjective involvement by timing and degree, thereby enabling even highly subjective, uncertain, or non-intuitive human interventions to follow a standardized and procedural technical evaluation path.

While enhancing the copyright system's inclusiveness for new types of content, it is also necessary to guard against the erosion of the public domain caused by excessive expansion of the protection scope. In the reconstruction of the originality standard, when there is a risk that the objectivist standard may be oversimplified into mechanical judgment, subjectivism should be simultaneously adopted. Appropriate rules regarding the public domain or anti-circumvention measures should be established to ensure that the copyright system maintains a dynamic balance between encouraging creation and protecting sharing. Regarding the protection term for AIGC, granting the same duration as human-authored original works may provoke greater concerns about fairness in the copyright system. Therefore, it is reasonable to set the copyright protection term for AIGC at five years. Given the rapid advancement of AI technology, even one calendar year may see a model evolve into a second or third generation. Granting longer protection terms would neither continue to generate economic benefits after technological iteration, nor would it be conducive to the public domain. Calculating AIGC's economic value on a five-year life cycle is relatively reasonable. Regarding labeling of AIGC, China has already issued the Measures for the Identification of AI-Generated Synthetic Content (Cyberspace Administration of China, 2025). AI companies and content platforms are expected to label AIGC accordingly under this guidance. From a market-driven perspective, machine-generated creation itself carries a certain performative or artistic quality (Li, 2019). Even if the law grants human creators longer protection terms, AIGC creators are very likely to brand their works with AIGC labels to highlight them. Of course, some argue that AIGC should immediately enter the public domain (Palace, 2019). However, this would negate the value-realizing function of the copyright system. If AIGC receives no protection even momentarily, how could the rights of human users who have engaged in multiple rounds of interaction and modification be compensated?

5. CONCLUSION AND SUGGESTION

Reviewing the history of the copyright system, it is evident that copyright aims to balance the dual functions of protecting the individual expression of authors and encouraging creation. To this end, the originality standard was established as a criterion to identify qualifying works. Regarding this standard, there has long been a theoretical divergence between subjectivism and objectivism: subjectivism emphasizes the mental and personal contribution of natural persons as creators, yet it lacks flexibility in the face of changing modes of creation; objectivism judges based on the external appearance of results, offering certain judicial operability but to some extent neglecting the foundational value judgments of the system. This theoretical divergence has become increasingly apparent with the advent of AI-generated content (AIGC). Observing China's current judicial practice concerning AIGC reveals a tendency towards integration, indicating the possibility of combining result-oriented evaluation with the pursuit of the social value function of the system.

Therefore, to resolve the present inadequacy of the originality standard in accommodating AI-involved creation modes, it is feasible to explore a judgment framework that prioritizes objectivism supplemented by subjectivism, taking the work's distinguishable differences and novelty of expression as the core criteria, while incorporating important value judgments of the copyright system as a complementary factor. Such a framework provides a buffer to reconcile the opposition between the two schools of thought and offers certain enlightenment for other jurisdictions addressing AIGC copyright issues.

Of course, given the limited number of existing AIGC cases, a comprehensive and stable viewpoint has yet to form, and subsequent cases may overturn earlier ones. Following the approach centered on differences in works and novelty of expression, supplemented by subjectivist value judgments, the next step after developing solutions regarding the originality standard would be to discuss the copyrightability of AIGC, followed by determining the ownership and authorship issues related to AIGC.

CONFLICT STATEMENT

The authors declare no conflict of interest.

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