



2019 Study Question

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Jonathan P. OSHA, Reporter General
Ari LAAKKONEN and Anne Marie VERSCHUUR, Deputy Reporters General
Guillaume HENRY, Ralph NACK and Lena SHEN, Assistants to the Reporter General
Copyright in artificially generated works

Responsible Reporter(s): Guillaume HENRY

National/Regional Group	China
Contributors name(s)	Xinyi Guo, Haijun Lu, Xiaoming Ma, Xiaoning Pan, Xianzhi Quan, Wencong Xiong, Chunhui Zhou, Lei Zhao, Jun Wang, Yanrong Li, Jinli Liu, Chenyao Li, Yingjie Wu, Jia Zhao
e-Mail contact	aw@taoanlaw.com

I. Current law and practice

Please answer all questions in Part I on the basis of your Group's current law and practice.

To answer questions 1 to 11, please base your answers on the Working Example in the full text of the Study Guidelines. If you believe that reference to other scenarios/examples is useful, please raise such scenarios/examples and their relevance to the questions presented.

1 Does your current law / practice contain laws, rules, regulations or case law decisions specifically relating to Copyright and/or Related Rights in artificially-generated works?

No

Please Explain

There are no specific laws, rules, regulations or judicial precedents which specifically relate to Copyright and/or Related Rights in artificially-generated works in China.

However, China places great importance on this issue and is gradually promoting relevant legislation in artificially-generated works to prevent and respond to the problems and risks that may arise from the development of artificial intelligence.

There is a case (*Beijing Film Law Firm v. Beijing Baidu Netcom Science and Technology Co., Ltd. regarding Copyright Infringement (2018) Jing 0491 Minchu No. 239*) which might be related to the issue. One of the main issues involved in this case is whether the report automatically generated by the database constitutes “a work” under the *Copyright Law of the People’s Republic of China* (“Copyright Law”).

The court held that the originality is not a sufficient condition for a work to be recognized as a literary work under Copyright Law. According to the current Copyright Law, the literary works should be created by natural persons. Since the report is not created by natural persons, even if the report is original, it is not a work as understood by Copyright Law.

A. Application of general Copyright criteria to artificially-generated works

Authorship

2 Does your current law / practice require that a work has to be created by an identified author (natural or legal person) to be protected by Copyright?

* By answering this question, don’t take into consideration anonymous works and pseudonym works. Please also note that this question is independent from the question of the rights holder.

Yes

Please Explain

This is controversial. The current law / practice in China does not expressly require that a work be created by an identified author to be protected by Copyright.

Some group members maintain that although the law does not expressly specify the author’s identity requirements, according to *Articles 2[1] and 9[2]* of the *Copyright Law of the People’s Republic of China*, the subjects that can be protected by Copyright are usually natural persons, legal persons or other organizations.

Footnotes

1. [^ https://wipolex.wipo.int/en/text/186569](https://wipolex.wipo.int/en/text/186569)

2. [^ https://wipolex.wipo.int/en/text/186569](https://wipolex.wipo.int/en/text/186569)

3 Does your current law / practice require that a work has to be created by a human to be protected by Copyright?
* Please note that this question is independent from the question of the rights holder.

Yes

Please Explain

The current law / practice in China does not expressly require that a work be created by *a human* to be protected by Copyright Law; however, in the relevant case (see the answer to question 1), the court believes that the work must be created by humans in order to be protected by Copyright Law. Most of our group members hold this view as well.

4 Could one or more of the natural persons involved in the process of the following Working Examples be qualified as authors of the resulting work in your jurisdiction?

4.a The authors of the program or code that defines the AI entities?
* As noted in Paragraph 2 of the Discussion developed in the full text of the Study Guidelines, "AI entities" refers to the system(s) that creates the AI-created work and does not refer to a legal or juridical entity.

Yes

Please Explain

According to the survey, most members maintain that it could be analogous to the work for the hire clause of *Article 16[1] of the Copyright Law of the People's Republic of China*, where the authors shall be determined by laws, administrative regulations and/or agreements. Without the abovementioned rules / agreements, the copyright should belong to the authors of the program or the code that defines the AI entities.

A few people believe that even without laws, administrative regulations or related agreements, the author of the program or code that defines the AI entities cannot be the author of the resulting work.

Footnotes

1. [^ https://wipolex.wipo.int/en/text/186569](https://wipolex.wipo.int/en/text/186569)

4.b A human who defines the particular goal or objective to be achieved by the AI entities?

Yes

Please Explain

According to the survey, most members maintain that the human who defines the particular goal or objective to be achieved by the AI entities could be qualified as the author of the resulting work.

This is because it would be conducive to promoting and stimulating the creation of works, forming a virtuous circle and ultimately realizing the goal of increasing the spiritual wealth of our society, if the subject who defines the particular goal or objective to be achieved by the AI entities, whose intention can be represented by the work and who is capable of taking responsibility, is identified as the author of the resulting work.

4.c A human who selects the data or the data selection criteria (inputs)?

No

Please Explain

According to the survey, most members maintain that the human who selects the data or the data selection criteria (inputs) can be considered as the "user" of the artificial intelligence system. He/she controls the AI system through a process-based operation, with a low degree of creativity, and therefore should not be recognized as the author of the resulting work.

A few people hold that it is possible for a human who selects the data or the data selection criteria (inputs) to be the author.

4.d A human who selects a particular artificially-generated work from multiple works generated by the AI entities?

No

Please Explain

Similar to the answer to question c.

4.e Someone else?

Yes

Please Explain

Most people maintain that this issue is mainly related to “investors” in artificial intelligence. One primary purpose of Copyright Law is to stimulate the creation and dissemination of works and to achieve cultural prosperity. Investors, who can be regarded as the author of the resulting work of an artificial intelligence, can play an important role in leading, supervising and financially supporting the whole process of the artificial intelligence production.

Originality

5 If, in your jurisdiction, originality is a requirement for a work to be protected by Copyright, could an artificially-generated work qualify as an original work in your jurisdiction?

Yes

Please Explain

In accordance with the PRC Copyright Law, originality is one of the conditions for copyright protection. Whether or not an artificially-generated work possesses originality is still controversial.

Some believe that originality should be subject to objective judgement, which means that if an artificially-generated work is not copied from another work, and if it possesses the “minimum degree of creativity”, then it should be qualified as an original work. Others think that originality is the outcome of human beings’ mind and consciousness. Only the works created by human can possess originality.

Supplementary criteria

6 If there are supplementary or other requirements for a work to be protected by Copyright in your current law / practice, can an artificially-generated work in accordance with the Working Example fulfill them?

No

Please Explain

In accordance with Article 3^[1] of the *Copyright Law of the People's Republic of China* and Articles 2 and 3^[2] of the *Regulations for the Implementation of the Copyright Law of the People's Republic of China*, apart from originality, a copyrightable work can be reproduced in a tangible form, and can be considered as an intellectual creation by intellectual activities. In addition, in accordance with Article 9^[3] of the *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*, copyright law only protects the expression of the idea (that is, the work) and not the idea itself.

We believe that an artificially-generated work is not the result of intellectual activities. So an artificially-generated work cannot fulfill the

requirements of constituting a work under the PRC Copyright Law.

Footnotes

1. [^ https://wipolex.wipo.int/en/text/186569](https://wipolex.wipo.int/en/text/186569)
2. [^ https://wipolex.wipo.int/zh/text/456390](https://wipolex.wipo.int/zh/text/456390)
3. [^ https://wipolex.wipo.int/zh/text/500864](https://wipolex.wipo.int/zh/text/500864)

Original ownership

7 Assuming that, under your current law / practice, an artificially-generated work is protectable by Copyright, who would be the “first owner” of the Copyright, *i.e.* the person defined by the law as the *original owner* ?

Assuming that an artificially-generated work could be protected by Copyright Law, in accordance with Article 11 [1] of the *Copyright Law of the People’s Republic of China*, the entity who imposes the intention, supervises and is responsible for the work could be the “first owner”.

Footnotes

1. [^ https://wipolex.wipo.int/en/text/186569](https://wipolex.wipo.int/en/text/186569)

8 Under your current law / practice, could an AI system or machine be qualified as a juridical entity capable of holding Copyright or Related Rights?

No

Please Explain

In accordance with Article 2[1] of the *General Provisions of the Civil Law of the People’s Republic of China* and Article 2[2] of the *General Principles of the Civil Law of the People’s Republic of China*, the legal subjects include the natural persons, legal persons and non-incorporated organizations. Only the legal subjects are qualified to be entitled to civil rights and to assume civil responsibilities. As the AI system is not within the scope of legal subjects, it cannot be qualified as a juridical entity capable of holding Copyright or Related Rights.

Footnotes

1. [^ http://en.pkulaw.cn/display.aspx?id=80296634739ab0dcbdfb&lib=law](http://en.pkulaw.cn/display.aspx?id=80296634739ab0dcbdfb&lib=law)
2. [^ http://en.pkulaw.cn/display.aspx?id=1165&lib=law](http://en.pkulaw.cn/display.aspx?id=1165&lib=law)

9 Does your current law / practice allow non-humans and/or non-judicial entities to hold Copyright?

Yes

Please Explain

The current law / practice only allows juridical entities to hold Copyright, but the juridical entities may not be human.

According to Article 11[1] of *Copyright Law of the People’s Republic of China*, the Copyright in a work shall belong to its author, who may be a

citizen, legal entity or other organization. These three are juridical entities, and legal entities and other organizations are not human.

Footnotes

1. [^ https://wipolex.wipo.int/en/text/186569](https://wipolex.wipo.int/en/text/186569)

Term of protection

10 Assuming that, under your current law / practice, an artificially-generated work is protectable by Copyright, what is the term of protection?

According to Article 21^[1] of the *Copyright Law of the People's Republic of China*, the term of protection of artificially-generated works may be determined based on the relevant provisions with respect to a work where the copyright belongs to a legal entity or other organization or with respect to a work created in the course of employment, where the legal entity or other organization enjoys the copyright, which shall be fifty years, and expires on 31 December of the fiftieth year after the first Publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected.

Footnotes

1. [^ https://wipolex.wipo.int/en/text/186569](https://wipolex.wipo.int/en/text/186569)

B. Application of Related Rights criteria to artificially-generated works

11 Could a work created with the process of the Working Example be protected by any type of Related Rights?

If YES, please answer the following sub-questions:

No

Please Explain

The Related Rights refer to the rights which protect the legal interests of certain persons and legal entities that contribute to making works available to the public. The rights are recognized because of the role of these entities in making works available to the public which contain sufficient creativity to justify recognition of a copyright-like property right. In the Working Example, the process of artificial intelligence producing certain works does not reflect the communication to the public of the works, so the Related Rights may not be applicable.

1.a What type(s) of Related Rights would be applicable?

1.b What would be the requirements for protection by Related Rights?

1.c Who would be the original owner of the Related Rights?

1.c What would be the term of the protection?

II. Policy considerations and proposals for improvements of your Group's current law

12 Could any of the following aspects of your Group's current law or practice relating to artificially-generated works be improved?

2.a Requirements for artificially-generated works to be protected by Copyright and/or Related Rights?

Yes

Please Explain

Artificially-generated works should not be protected by Copyright or Related Rights.

2.b Ownership of artificially-generated works?

Yes

please explain.

Based on different values and legal approaches for protection, the potential original rights owners may include owners, investors, designers, users, trainers and so on.

2.c Term of protection of artificially-generated works?

Yes

Please Explain

According to Article 21^[1] of the *Copyright Law of the People's Republic of China*, the term of protection of artificially-generated works may be determined based on the relevant provisions with respect to a work where the copyright belongs to a legal entity or other organization or with respect to a work created in the course of employment, where the legal entity or other organization enjoys the copyright, which shall be fifty years, and expires on 31 December of the fiftieth year after the first Publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected.

Footnotes

1. [^] <https://wipolex.wipo.int/en/text/186569>

13 Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

Yes

Please Explain

Other suggestions depend on further understanding the technologies and more dispute samples.

III. Proposals for harmonisation

Please consult with relevant in-house / industry members of your Group in responding to Part III.

To answer questions 14 to 32, please base your answers on the Working Example in the full text of the Study Guidelines. If you believe that reference to other scenarios/examples is useful, please explain such scenarios/examples and their relevance to the questions presented.

14 In your opinion, should Copyright protection and/or Related Rights protection for artificially-generated works be harmonized? For what reasons?

Yes

For what reasons?
please respond to the following questions without regard to your Group

Because of the globalization of artificial intelligence problems and the need for cross-region copyright protection.

15 In your opinion, should artificially-generated works be protected by Copyright and/or Related Rights?

No

For what reasons?

This depends on the circumstances.

Copyright protects intellectual works created by humans, so artificially-generated works without human intervention should not be protected by Copyright or Related Rights. Artificially-generated works with human intervention do not reflect the communication of works to the public, so they cannot be protected by Related Rights. Among the artificially-generated works with human intervention, the works that reflect the creative activities of human should be regulated as regular works in accordance with the current law and practice, whereas the works that do not reflect the creative activities of human should not be protected by Copyright.

A. Copyright protection of artificially-generated works

16 Should intervention by a human be a condition for Copyright protection of an artificially-generated work?

Yes

at which step or steps in the Working Example would human intervention be required?

At the step of selecting a particular goal or objective to be achieved, and when confirming the data or data selection criteria.

17 Should originality be a condition for Copyright protection of an artificially-generated work?

Yes

Please Explain

This should be the basic requirement for copyright protection for all works.

18 What other requirements, if any, should be conditions for Copyright protection of an artificially-generated work?

Reproducibility, being results of intelligence.

19 Who should be the original owner of the Copyright on an artificially-generated work?

Based on different values and legal approaches for protection, the potential original owners of the Copyright may include owners, investors, designers, users, trainers and so on.

20 What should be the term of Copyright protection for an artificially-generated work?

According to Article 21^[1] of the *Copyright Law of the People's Republic of China*, the term of protection of artificially-generated works may be determined based on the relevant provisions with respect to a work where the copyright belongs to a legal entity or other organization or with respect to a work created in the course of employment, where the legal entity or other organization enjoys the copyright, which shall be fifty years, and expires on 31 December of the fiftieth year after the first Publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected.

Footnotes

1. [^] <https://wipolex.wipo.int/en/text/186569>

21 Should Economic Rights differ between artificially-generated works and regular works?

Yes

Please Explain

The degree of protection (including the term of protection etc.) should be lower than that of regular works.

22 Considering existing exceptions to Copyright, should any exceptions apply differently to artificially-generated works versus other works?

Yes

Please Explain

Based on the immortality of artificial intelligence, the scope of exceptions should be wider than that of other works.

23 Should there be any new exceptions to Copyright specifically applicable to artificially-generated works?

Yes

Please Explain

24 Moral Rights

24.a **Should moral rights be recognized in artificially-generated works?**

Yes

Please Explain

Moral rights are created on the basis of human characteristics and are not applicable to machines. The moral rights (except for the right to claim authorship of a work) of artificially-generated works should not be recognized.

24.b **If yes, what prerogatives should the moral rights include (for example, the right to claim authorship of the work, the right to object to any distortion, mutilation or other modification of the work)?**

The right to claim authorship of a work.

24.c **If yes, who should exercise the prerogatives of moral rights?**

Based on different values and legal approaches for protection, the potential owners of moral rights may include owners, investors, designers, users, trainers and so on.

B. Related Rights protection of artificially-generated works

25 **Considering existing Related Rights, should any Related Rights apply to artificially-generated works?**

No

Please Explain

The Related Rights refer to the rights which protect the legal interests of certain persons and legal entities that contribute to making works available to the public. The rights are recognized because of the role of these entities in making works available to the public which contain sufficient creativity to justify the recognition of a copyright-like property right. In the Working Example, the process of artificial intelligence producing certain works does not reflect the communication to the public of the works, so the Related Rights may not be applicable.

26 **Should there be any new Related Rights specifically applicable to artificially-generated works?**

No

27 **If an existing or new Related Right is applicable to artificially-generated works, what requirements should be conditions for protection?**

Originality, reproducibility, being results of intelligence, and reflecting the communication to the public of artificially-generated works.

28 Which Related Rights' economic rights and moral rights should apply to artificially-generated works?

According to our survey, most people believe that artificially-generated works should not be protected by Related Rights. Some believe that economic rights depend on the level of technology development, and that moral rights may include the right to claim authorship of a work.

29 Who should be the original owner of the Related Right?

Based on different values and legal approaches for protection, the potential original owners of the Related Right of the works generated by AI may include owners, investors, designers, users, trainers and so on.

30 What should be the term of protection of the Related Right?

No more than 50 years after the first publication of the work; 10 years is more suitable.

31 Please comment on any additional issues concerning any aspect of Copyright protection and Related Rights protection for artificially-generated works you consider relevant to this Study Question.

The artificial intelligence may be granted a legal personality.

32 Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.

The answers combine the views of in-house counsel in the fields of law, the Internet, science and technology.