



 **IPKey** | CHINA

**EU-China Roundtable on Copyright Protection
in the Digital Environment
中欧数字环境下版权保护研讨会**

Harbin中国·哈尔滨

2023年12月13-14日

**European Union
Intellectual Property Office
欧盟知识产权局**

**National Copyright
Administration of China
中国国家版权局**

**OVERVIEW OF THE SOCIO-POLITICAL, ETHICAL AND LEGAL
ASPECTS OF GENERATIVE ARTIFICIAL INTELLIGENCE
欧洲人工智能引起的社会哲学、政治、法律问题概述**

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**Hungarian Copyright Council 匈牙利版权理事会专家
Former Assistant Director General of WIPO 前世界知识产权组织助理总干事**

22d TIME IN CHINA SINCE 1982

1982 年来第 22 次在华研讨会



1982, Peking: The very first WIPO seminar
1982 年在北京：世界知识产权组织首次在华研讨会



**One of the 21 times; with Jiang Zemin, President of China
第21次来中国的某会议；得到时任中国国家主席江泽民接见
(Between us: Shen Rengan, Deputy Commissioner of NCAC
左二：时任中国国家版权局副局长沈仁干
and Arpad Bogsch, Director General of WIPO)
右二：世界知识产权组织总干事**



The 21st time: Guangzhou, December 2018
第 21 次研讨会于 2018 年 12 月广州举行



Prof. Zheng Chengsi
郑成思教授



Prof. Guo Shuokang
郭寿康教授

**In memory and honor of two great figures of Chinese and international IP law,
two outstanding scholars, two faithful friends of mine
谨此纪念我的两位朋友，他们是杰出的中国和国际知识产权法学者**



Chinese translation published by Renmin University Press of Dr. Mihály Ficsor's book „The Law of Copyright and the Internet” originally published by Oxford University Press – arranged by Prof. Guo Shuokang
人民大学出版社出版的中文译本《版权法和因特网》，作者 Mihály Ficsor 博士。该书最初由英国牛津大学出版社出版。在郭寿康教授的参与下，中文译本得以面世

TO STOP IT? CAN IT BE, SHOULD IT BE?
阻止 AI? 会出现超能 AI 吗? 应允许其存在吗?

Stop it! Let us relax and think it over! (1)

阻止 AI：梳理 AI 争议 (1)

More than 1,000 artificial intelligence developers, researchers and academics have joined to sign a call for an immediate pause on the creation of “giant” AIs for at least six months, so the capabilities and dangers of systems such as GPT-4 can be properly studied and mitigated.

1000 多名人工智能开发研究人员、学者联名呼吁立即暂停开发“大型”人工智能为期至少六个月，以便适当评估 GPT-4 等人工智能的能力和致害风险并予以缓解。

The demand is made *in an open letter signed by major AI players including: Elon Musk*, who co-founded OpenAI, the research lab responsible for ChatGPT and GPT-4; **Emad Mostaque**, who founded London-based **Stability AI**; and **Steve Wozniak**, the co-founder of **Apple**. Its signatories also include engineers from **Amazon, DeepMind, Google, Meta** and **Microsoft**, as well as academics including the cognitive scientist Gary Marcus.

该要求出自 一封公开信，一些人工智能业界参与者签署了这封信，包括埃隆-马斯克，他是 ChatGPT 和 GPT-4 背后公司 OpenAI 的联合创始人；埃马德-莫斯塔克，他是伦敦 Stability AI 公司的创始人；史蒂夫-沃兹尼亚克，他是苹果公司的联合创始人。签署联名信的人还包括亚马逊、DeepMind、谷歌、Meta 和微软的工程师，以及认知科学家加里-马库斯等学者。

Stop it! Let us relax and think it over! (2)

阻止 AI：梳理 AI 争议 (2)

Elon Musk (March 2023): “AI [...] has the potential — however small one may be that probability, but it is non-trivial — **it has the potential of civilization destruction.**”

埃隆·马斯克 (2023 年 3 月) 表示：不论其潜力多么有限，AI [...] 的潜力都不容忽视，**AI 可能会导致文明毁灭。**

Eliezer Yudkowsky (April 2023) has not signed the letter, because it does not show the seriousness of the situation, and what is proposed is not sufficient:

埃利泽-尤德科夫斯基 (2023 年 4 月) 没有在这封联名信上签名，他认为这封联名信没有体现出局势的严重性，也没有提出充分建议：

“Many researchers, including myself, **expect that the most likely result of building a superhumanly smart AI, under anything remotely like the current circumstances, is that literally everyone on Earth will die. Not as in ‘maybe possibly some remote chance,’ but as in ‘that is the obvious thing that would happen.’**”

“很多研究人员，包括我本人预计，如果在如今这样的环境下开发出来具备超人类能力的人工智能，将来很有可能导致人类灭亡。这种后果完全可能发生，不是什么‘小概率事件’。”

Stephen Hawking (November 2017): „**Success in creating effective AI, could be the biggest event in the history** of our civilization. **Or the worst.** We just don’t know. **So we cannot know if we will be infinitely helped by AI, or ignored by it and side-lined, or conceivably destroyed by it.**

斯蒂芬-霍金 (2017 年 11 月)：“**成功创造有效的人工智能，可能是人类文明史上最重大，或者是最糟糕的事件**，我们无从得知。因此，**我们无法知道**，人工智能会成为人类的强大助手，还是会忽视、排挤，甚至毁灭人类。”

Can it be stopped? (1)

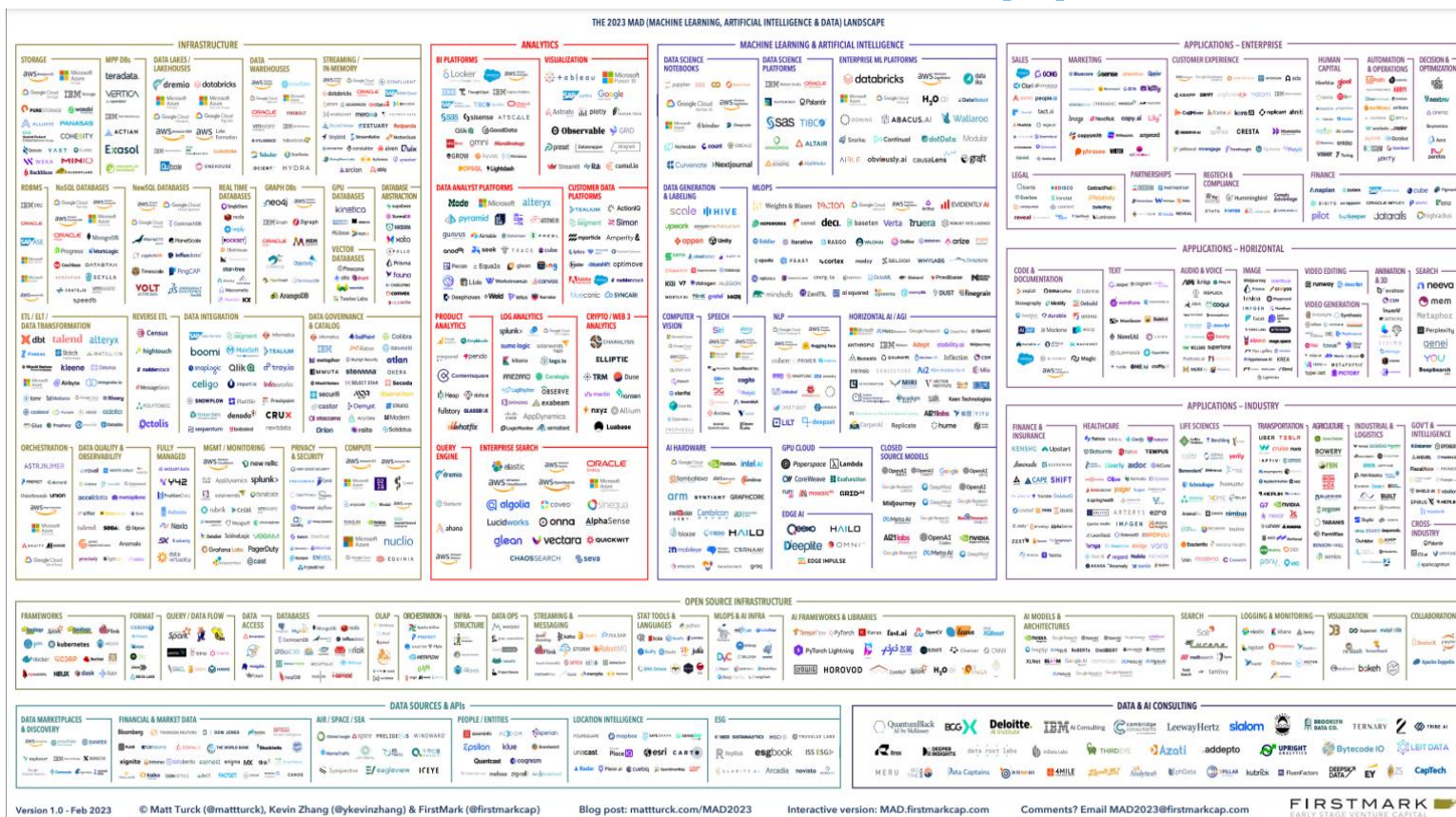
能阻止 AI 发展吗? (1)

To stop it? To suspend it?

阻止 AI? 暂停 AI 发展?

- **ChatGPT: November 30, 2022: releasing**
- **ChatGPT 发布日期 2022 年 11 月 30 日**
 - December 2022 (**within 5 day**): **1 million users**
 - 2022 年 12 月 (发布五天内) 用户数量破百万
 - February 2023: **100 million users**
 - 2023 年 2 月 用户数量破亿
 - March 2023: **1.6 billion users**
 - 2023 年 3 月 用户数量达到 16 亿
- **Open AI's ChatGPT had been trained by GPT-3.5. But in March OpenAI released already new versions base on the much more advanced GPT-4, and since then even more developed ones.**
OpenAI 利用 GPT-3.5 训练了 ChatGPT。3 月, OpenAI 就发布了根据更加先进的 GPT-4 开发出的新版本, 并不断迭代出更强大的 AI。
- **But there are already Microsoft's Bing Chat, Google's Bard, and a great number of other geretative AI system.**
微软开发了必应 Chat, 谷歌开发了 Bard, 等等人工智能系统层出不穷。

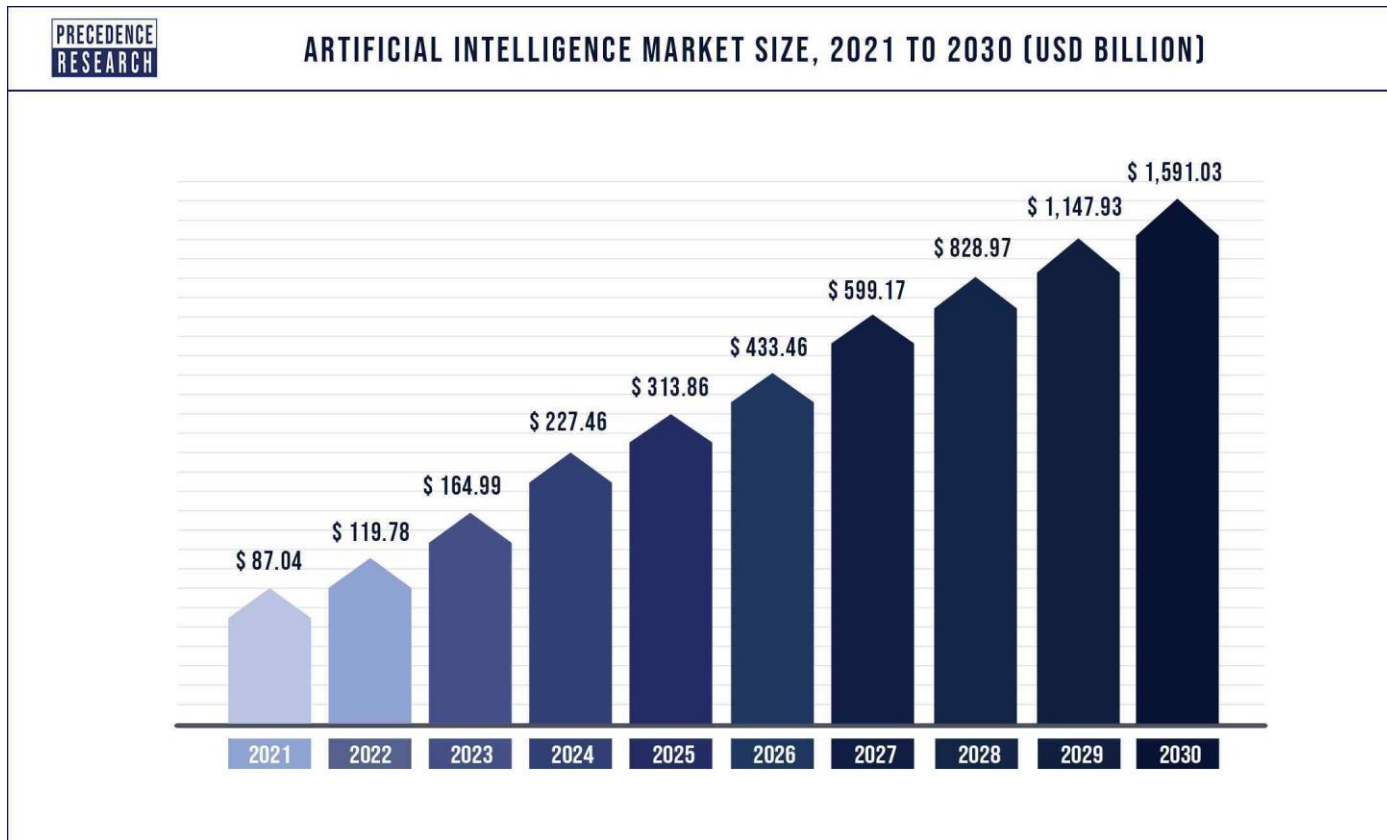
Can it be stopped? (2) 能阻止 AI 发展吗? (2)



Proliferation of AI systems 人工智能系统的爆发式发展

Can it be stopped? (3) 能阻止 AI 发展吗? (3)

To stop it? To suspend it?
阻止 AI? 暂停 AI 发展?



Fears, alarms 恐惧、警示



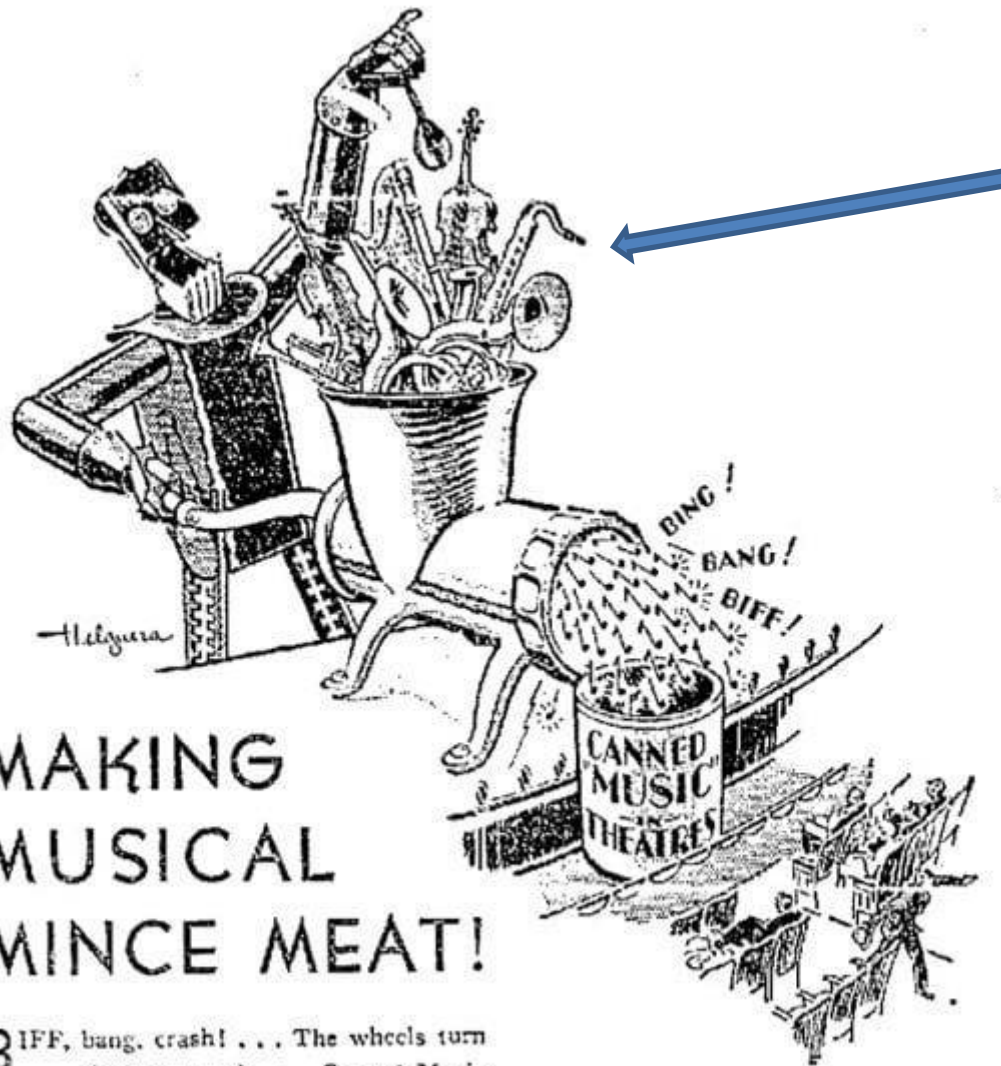
- „Artificial intelligence [...] will eventually starve our brains of mental efforts and thoughtfulness. [...], can degrade professional skills. ”
人工智能[...]会导致我们大脑的思考精力和思维能力不断下降， [...] 并破坏人类的专业技能
- „AI will affect what it means to be human, to be productive.”
随着生产力越来越高，人工智能会触及人类的本质
- „AI Makes Us Less Intelligent And More Artificial.”
人工智能会降低人类智力，让人类逐渐“人工化”
- „AI is making us more boring and less creative.”
人工智能会使人类平庸化，削弱人类的创造力

**AI AND COPYRIGHT –
„UPSTREAM”
AI 和版权——“上游环节”**

批量生成音乐!

MAKING MUSICAL MINCE MEAT!

BIFF, bang, crash! . . . The wheels turn
. . . the cogs mesh . . . Canned Music
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EU regulation (1)

欧盟监管规则(1)

- **Non-AI-specific exceptions and limitations**: InfoSoc Directive: Art. 5(1) „**transient or incidental**” reproduction (but **it is not incidental** to a use; **it is the use itself**; and not just transient), Art. 5(3)(a) **research** (DSM Directive, Art, 3. *lex specialis*); Art. 5(3)(d) **quotation** (for AI training, **the works are not just quoted**; the use of protected repertoires takes place in other way).

并未特指人工智能的例外情况和限制条件：《信息社会指令》：第五条第一款中“短暂或偶发性的“再制作（但 AI 的使用不是偶发性的；运行 AI 本身就是使用 AI；并且这一过程并不短暂）”
第五条第三款(a)项中的**研究活动**（《数字化单一市场指令》，第3条，优先适用的特别法）。
第五条第三款(d)项中的**引用**（训练人工智能不仅仅会引用作品，还以其它方式使用受保护的作品库）。

- **„Text and data mining”** (but **not only text an mere data**; any works and other protected materials):

“文本和数据挖掘”（数据**不仅包含文本**、所有作品和受保护的材料）

- **DSM Directive, Article 3: exception for research**;
《数字化单一市场指令》第三条：**针对研究活动的例外情况**
- **DSM Directive Article 4: exception for any purposes with the possibility of „opt-out.”**
《数字化单一市场指令》第四条：**可能退出的任何目的除外**

EU regulation (2)

欧盟监管规则(2)

Article 3. Text and data mining for the purposes of scientific research

第 3 条 以科学研究为目的的文本和数据挖掘

1. Member States shall provide for an exception [...] for reproductions and extractions made by research organisations and cultural heritage institutions in order to carry out, for the purposes of scientific research, text and data mining of works or other subject matter to which they have lawful access.

成员国须规定，为进行科学研究，研究组织和文化遗产机构合法获取作品或其它主题并对其进行文本和数据挖掘，该过程的复制和提取除外[.....]。

2. Copies of works or other subject matter made in compliance with paragraph 1 **shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results.**

按照第 1 段规定制作的作品或其它主题的复制品须以适当的安全级别保存，并可以出于科学研究目的——包括核实研究成果——而保留。

- **The concept of „research” should be interpreted strictly as *scientific* research.**

“研究”的概念应严格解释为科学研究。

- **Adequate protection is needed against „data laundering” (that is, the use of the results of TDM based on scientific research for commercial purposes).**

需要提供充分的保护，防止“数据清洗”（把用于科学研究的文本和数据挖掘产出用于商业目的）。

EU regulation (3)

欧盟监管规则(3)

Article 4. Exception or limitation for text and data mining

第 4 条 文本和数据挖掘的例外情况或限制条件

1. Member States shall provide for an exception or limitation [...] for reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining.

成员国须规定为了进行文本和数据挖掘对合法获取作品和其它主题进行复制和提取[.....]的例外情况或限制条件。

2. Reproductions and extractions made pursuant to paragraph 1 may be retained for as long as is necessary for the purposes of text and data mining.

按照第 1 段规定进行复制和提取的产品，可以在文本和数据挖掘期间保留。

3. The exception or limitation provided for in paragraph 1 shall apply on condition that the use of works and other subject matter referred to in that paragraph has not been expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online.

如果第 1 款提及的作品和其他主题的使用权尚未由其权利人以适当方式明确保留，例如在网上公开提供内容时通过机器可读方式保留，那么第 1 款规定的例外情况或限制条件须适用，

- The shadow of the CJEU's *Svensson* judgement?

欧盟法院 *Svensson* 一案判决影子？

EU regulation (4)

欧盟监管规则(3)

- Question: **what is „a machine-readable means in the case of content made publicly available online”** in Article 4(3) necessary for „opt-out”. **It should not require any means more demanding than, e.g., the use of robot.txt** because it is a matter of information (that is **rights management information (RMI)**) **should be sufficient**. (That is, **the application of technological protection measures (TPM) is not a requirement.**)
问题：第四条第三款中，“[...]在网上公开提供内容时**通过机器可读方式保留。**”中的“**机器可读方式**”是什么？是实施第四条第三款“**选择退出**”（许可或禁止他人将作品和其它受保护的作品用于文本和数据挖掘）的必要条件。这种方式应当和 robot.txt 这种普通文件一样简单易行，因为问题的核心在于信息（即**行使管理信息权就充足**）。（换言之，**采取技术保护措施(TPM)不是要求**）
- **The opt-out should be easily applicable** in order to make it possible to the authors, performers and other rightholders **to license or prohibit the use of their works and other protected productions.**
退出选项应易于实施，以便作者、表演者和其他权利人可以许可或禁止他人使用其作品和其它受保护的作品。
- **In certain cases** – for example concerning the public performance and communication to the public of musical works – **the opt-out should be possible through a CMO.**
公开表演音乐作品和向公众传播等情况下，**应当可以通过集体管理机构选择退出。**

US fair use

美国：合理使用

- **Pessimistic opinions (from the viewpoint of the rightholders)** (see e.g. Daniel Gervais): the use of works for the **training of AI probably will qualify as fair use.**
悲观派 (从权利人的角度) (Daniel Gervais 等人认为) : **将作品用于人工智能训练可能属于合理使用。**
- **Optimistic opinions** (see e.g. Neil Turkewitz): **of the four factors** provided in session 107 of the US Copyright Act, at least, **one or two tell against fair use.**
乐观派 (Neil Turkewitz 等人认为) : 在美国《版权法》第 107 条规定的**四个因素中**, **至少有一两个因素反对合理使用。**
- **The optimism seems to be justified. In particular the forth factor tells against fair use: „the effect of the use upon the potential market for or value of the copyrighted work”.** It tells quite **decisively against fair use, since the negative impact** of such kind of use on the market of protected works **is so big as:**
这种乐观主张似乎合理。具体而言, 第四个因素反对合理使用: “使用对版权作品潜在市场或价值产生影响”。 这是一项**不利于合理使用的决定性因素**, 因为这种使用对受保护作品市场的**负面影响巨大**:

**AI AND COPYRIGHT:
„DOWNSTREAM”
AI 和版权——“下游环节”**

批量生成音乐!

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Nearly complete agreement: only humans may create works 各方几乎一致认同：只有人类可以创作作品

- In accordance with the author-originality-work trinity, the overwhelming majority of the commentators do agree in that only humans are able to create original productions and thus to become authors (see, e.g. various studies by Daniel Gervais, the thorough report prepared by Alexandra Bensamoun and Joëlle Farchy for the French Ministry of Culture, the writings by Jane Ginsburg, Silke von Lewinski, as well as the position of the US Copyright Office and what seems to emerge from the most recent developments in the E.U. (more emphasis on a human-centric approach and the respect for human rights – among which there are the rights of authors; see Article 27(2) of the Universal Declaration of Human Rights.)

根据作者-原创-作品三位一体的理念，绝大多数观点认为，只有人类能够创作原创作品从而成为作者。根据 Daniel Gervais 的多项研究、Alexandra Bensamoun 和 Joëlle Farchy 为法国文化部撰写的报告、Jane Ginsburg 和 Silke von Lewinski 的著作，美国版权局的立场以及欧盟的最近动向（更加强调以人为本和尊重人权，包括著作权；见《世界人权宣言》第27条第二款。

- Beyond – and independently from – all the various philosophical, political, technological, biological and legal studies, it clearly follows from a number of provisions of the Berne Convention that only humans may be authors. Original owners of copyright might be also others, but the rights of those owners are also in works created by humans.

在各种哲学、政治、技术、生物、法律研究之外，《伯尔尼公约》的一些条款明确规定，只有人类可以成为作者。版权的原始所有者也可能是其他人，但这些权利仍属人类作品的版权范畴。

**A fully AI-generated picture; the USCO and the court has rejected its
registraion**

下图是完全由人工智能生成的图片；美国版权局拒绝为其注册版权



**„A Recent Entrance to the Paradise“; both the USCO and the court:
no work, no author, no copyright protection**

“近访天堂”；美国版权局和法庭一致认为该图不属于作品，没有作者、无版权保护

Non-existent copyright – and its „licensing” 不存在版权和 “许可”

- The productions generated by AI uncontrolled deep learning without any human intervention fall into the public domain.
不受控且没有人工干预的 AI 深度学习生成的内容进入公共领域
- There are AI companies that „transfer” – non-existing – copyright in AI productions either by maintaining ownership and granting licenses, or by assigning the rights against payment.
某些人工智能企业会通过维持所有权、授予许可、无偿权利让与的方式，转移人工智能生成内容的版权（实际上没有版权）。
- One of the forms of such practice: „royalty free” licensing of the use of musical AI productions as „works” by certain „independent management entities.”
比如：某些独立管理实体向他人“免除版税”许可使用人工智能生成的音乐内容并称之为“作品”。

Registered by the USCO as original
arrangement of pictures and accompanying text
美国版权局注册的图片布局和配套文本



„Zarya of the Dawn,” comic book by Kris Kashtanova, *original arrangement of unprotected pictures generated by Midjourney.*
Kris Kashtanova的漫画《黎明的曙光》，Midjourney生成的不受版权保护图片原创布局

AI-assisted or –based creations (1)

人工智能辅助或基于人工智能的创作内容 (1)

- In principle it is clear: if an author only used an AI production as a basis or assistance for and original creation, the work made in that way is protected by copyright. And in that case the general copyright rules apply.

原则上很清楚：如果作者仅采用人工智能作为基础或辅助其进行原创，那么创作的作品受版权保护。这种情况适用一般的版权规则。

- **Where may original contribution take in the production of AI-based works?** For example (i) where the controlled training of AI, the formation of the output by substantive prompts and its final presentation take place in one complex process by the same person(s); (ii) where not just a simple prompt is used but the instruction given to the AI goes beyond mere ideas, and – in the form of „developed ideas” – includes already original elements, or (iii) where creative features appear in the subsequent changes, alterations, arrangements, etc. (in the same way as in the case of such transformations of works fallen into the public domain or of folklore expressions)..

在基于人工智能的作品中，原创性可以体现在哪些方面？例如：(i) 人工智能的受控训练、输入关键提示形成输出、最终呈现结果是同一个人完成的一个复杂过程；(ii) 给人工智能的指令不是简单提示，而是“复杂思考”，包含已经原创的元素；或(iii) 随后的变化、改动、布局等方面展现出创造性特征（如同对公共作品或民间文学表达进行改编）。

AI-assisted or –based creations (1)

人工智能辅助或基于人工智能的创作内容 (1)

The Devil in the details:

关键细节:

- Since the status of a work protected will probably be seen to be advantageous, **there will certain be attempts to allege, about a mere AI-generated production, that it includes original creation, and thus it is a work.**
为作品争取到的受保护地位很可能被视作有利，**所以肯定会有人声称，人工智能生成的内容包含原创元素，因此是作品。**
- **The presumptions may facilitate this** (see Art. 15(1)-(2) of the Berne Convention; Art. 5. of the Enforcement Directive).
相关推定可能会支持这种观点 (见《伯尔尼公约》第十五条第一、第二款；《执行指令》第 5 条)。
- SGAE’s „La Rueda” know-how may be applied (**domain public productions laundered with minor changes**).
可以采用 SGAE 的 “La Rueda” 专有技术 (**对公域作品略加修改进行清洗**)。
- **Complete transparency would be needed – with the obligation to indicate the AI origin of the productions concerned** (by some machine-readable digital means).
需要充分透明——有义务说明作品的人工智能来源 (通过机器可读的数字手段)。

Difficulties in identifying the sources (1)

识别来源的难点 (1)



Original 真实照片



AI-generated 人工智能合成的图片

Easy: even the Getty Images' trademark appears in the AI-generated picture (lawsuit against Stable Diffusion)
易于分辨: 人工智能合成的图片中甚至出现了 Getty Images 的商标水印 (可以上诉 Stable Diffusion 侵权)

Difficulties in identifying the sources (2)

识别来源的难点 (2)



McKernan's original work
McKernan 的原创作品



AI imitation of McKernan works
人工智能仿作的 McKernan 作品

Less easy, but still. Three young US artists (Sarah Andersen, Kelly McKernan and Karla Ortiz) has launched a class lawsuit against image-generators for unauthoried use of identifiable elements of their creations.

更加逼真，但仍有破绽。三位美国年轻艺术家（Sarah Andersen, Kelly McKernan and Karla Ortiz）对图像生成机构发起集体法律诉讼，上诉其未经授权使用自己作品中具有代表性的元素。

Difficulties in identification of sources (3)

识别来源的难点 (3)



**AI-generated picture made in response
to the prompt
„Hungarian Woman”**

**输入“匈牙利女性”后人工智能生成
的图片**



**Among the tremendous number of
photoes probably also photos created by
me; but how to prove?**

**图片浩如烟海，可能某张图片就出自我
手；但如何证明？**

Unconvincing arguments about absence of conflicts with copyright 关于版权侵犯：一些缺乏说服力的观点

- The „sampling” argument: „no identifiable element” (but it can hardly be denied that the AI products that seem to be similar to works are generated from the use of the elements of protected works.)
“取样”论：“没有代表性元素”（但很难否认，与人类作品相似的 AI 生成内容是使用受保护的作
品元素产生的）
- The „style is not protected” argument. (AI productions imitating the style of certain authors **tend to be in conflict with their personality rights; it is a kind of passing off.**)
“风格不受保护”论（模仿人类作者风格的 AI 生成内容往往侵犯了人类作者的人格权；模仿人类作
者风格是假冒行为）
- The „parody” parallel. (In the U.S. perhaps it may have some relevance on the basis of the *Acuff-Rose* criteria but, in the E.U. the concept of parody determined in *Dekmyn* does not support it.)
“模仿”平行论（按照美国 *Acuff-Rose* 标准这一观点可能不无道理，但在欧盟，*Dekmyn* 案确定
的模仿概念不支持这一观点）
- The „no conflict with normal exploitation of the works used for the training of AI” argument (see BSA’s submission in the consultation by the US Copyright Office). (In fact, there is a huge conflict. The cheap AI productions generated from the elements of works **may crowd out protected works** from certain valuable markets.)
“用于人工智能训练的作品属于正常利用没有冲突”的论点（见美国BSA在美国版权局咨询中提交的
材料）。（实际上二者存在巨大冲突。采用了作品元素的廉价人工智能生成内容可能会挤压受保护作
品的某些有价值市场）

Huge conflict to eliminate (1)

亟待解决的巨大冲突 (1)

- **Martin Senftleben' s proposal: „levy” on the AI programs** „as in the case of compensation for private copying”).
Martin Senftleben 提议对人工智能程序 “征税”，和 “对私下复制进行补偿” 情况相同) 。
- **Justified recognition of the need to compensate the use of works for training AI, although it would raise certain legal and practical questions. As a compensation it would not be sufficient alone. The key solution should be the application of the right of reproduction in the „upstream” stage (based on the possibility of „opt-out”, see above).**
有理由承认，必须针对使用作品训练人工智能进行补偿，尽管这会引起某些法律和现实问题，仅有补偿是不够的。更关键的是在 “上游” 阶段解决行使复制权 (“选择退出” 的情景，见上文)
- It would emerge as basic practical question **how could it be applied vis-à--vis of big global AI regimes with headquarters in other countries.**
行使复制权是一个基本的实际问题，尤其对总部设在海外的大型全球人工智能企业而言。
- It might compensate the private use of AI productions, but **it would not be in proportion with the dynamism of all kinds of uses thereof (also public and commercial uses).**
可对私人使用会起到补偿作用，但不适用于人工智能生成内容的其他使用 (包括公共和商业使用) 。

Huge conflict to eliminate (2)

亟待解决的巨大冲突 (2)

- Discussed at the ALAI Congress in Paris in June 2023: It would seem to be a more adequate solution to apply a *domain public payant* system in case of public – in particular commercial – uses of AI-generated productions to be operated by CMOs; such as distribution of copies to the public, public performance, communication to the public and interactive making available to the public.

2023年6月巴黎国际文学和艺术协会大会讨论：人工智能所生成的内容在公共使用、特别是商业使用时，采用公域付费制度 - 尤其是集体管理机构负责运营，这种方案更合适；集体管理机构可以向公众分发复制品、进行公开表演、向公众传播、向公众提供互动内容等。

- There is an existing parallel: a number of African countries apply a similar – *de facto domain public payant* – remuneration system for such uses of expressions of folklore (thus, not protected by copyright)

现有的类似案例：一些非洲国家对民间文学艺术表现形式（因此不受版权保护）采取事实上的公域收费的收费制度。

- **Distribution and use of such payments? It may take place in a „rough justice” (but „justice”) manner similar to how it happens in the case of private copying „levies” – but also taking into account that its justification would be to compensate, and to ensure the sustainability of, human creativity and cultural diversity.**

所收资金如何分配和使用？可能以属于“简单粗暴公正”（但仍然“公正”）的方式，类似于对私下复制行为“征税”。但是，也要认识到，目的是为了补偿和确保人类创造力和文化多样性持续繁荣。

Sui generis (or related rights) protection for AI-generated productions?
保护人工智能生成内容的**专有权利** (或**相关权利**) ?



E.g., Alexandra
Besamoun
Alexandra Besamoun 等人持赞同意见



Many others
(the jury still out)
立场不确定



E.g., Silke von
Lewinski
Silke von Lewinski
等人持反对意见

***Sui generis* (or related rights) protection for AI-generated productions? 保护人工智能生成内容的专有权利 (或相关权利) ?**

- **Silke von Lewinski points out the obvious contradiction** that would emerge, if cheaper AI productions derived from elements of human creations could force out those creations from certain markets and they still would enjoy *sui generis* (or related) rights:

Silke von Lewinski 指出了明显矛盾：从人类创作元素中衍生出的人工智能生成内容更廉价，并将人类作品挤兑出某些市场，并且人工智能生成内容仍然享有专有（或相关）权利

Why the law would have to be promote, by granting a related or *sui generis* right, the productions made by non-humans that have rather negative impact on human creation and cultural diversity?

非人类作品会严重影响人类创造作品和文化多样性，**为什么法律要赋予非人类作品专有或相关权利以促进这些非人类作品的发展？**

- **She is right, but Alexandra Besamoun may also be right:** AI makers and users **could hardly be stopped** in putting their generated productions on the markets, **but with a modest *sui generis* right, they at least might not present those falsely as works created by authors.** However, the level-playing fields would have to be re-established for the authors' community with a parallel interest in those productions; **such by the above-suggested *domain public payant*.**

这位学者所言正确。但 Alexandra Besamoun 可能也对：几乎不可能阻止人工智能的开发者和使用者将他们制作的内容投放市场，**但如果存在适度的专有权利，这些开发者和使用者至少不会谎称这些生成内容是人类创作的。**与此同时，对这些作品同样感兴趣的作者群体，我们必须为他们重新建立公平的竞争环境，比如上文提到的公域付费。

RELATED RIGHTS

相关权利

Performers

表演者

- As regards input, similar considerations as in the case of copyright.
就输入而言，前文讨论也适用于表演者的版权。

Output – special aspect: need for protection of personality rights against deepfake AI productions.

就输出而言：特别要注意，需要确保人格权不受机器学习生成的深度伪造内容侵犯。

- Domain public payant, where justified.
在有正当理由的情况下，公域付费者。

- Clarification of the definition of „performers.“ The 1996 Diplomatic Conference found it necessary to state in Article 2(a) of the WPPT that not only those who perform literary and artistic works but also who perform expressions of folklore are covered by the definition. It may be necessary to make such clarification also for the performances of AI-generated productions.

要明确“表演者”的定义。1996年外交会议认为，有必要在《世界知识产权组织表演和录音制品条约》第2条(a)项中说明，该定义不仅包括表演文学和艺术作品的人，也包括表演民俗的人。可能有必要对人工智能制作的作品的表演作同样说明。

Phonogram producers, broadcasting organizations 录音制品制作者和广播组织

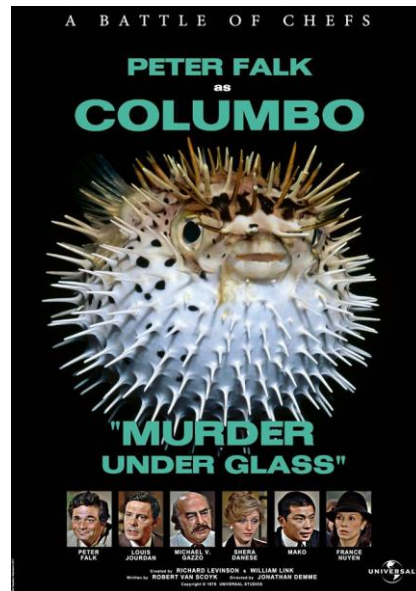
- As regards input, similar considerations apply to the rights of producers of phonograms as to copyright.
就输入内容而言，前文对版权的讨论也适用于录音制品制作者的权利。
 - Output: *domain public payant* may also be justified for the use of phonograms.
就输出内容而言：公域付费者使用这些录音制品可能合理。
 - The recordings of sounds of performances of AI productions (or of directly generated sounds or the representations of sounds) also qualify as phonograms.
 - 录制人工智能生成内容表演的声音（或录制直接产生的声音或声音的表现形式）也属于录音制品。
-
- As regards input, similar considerations apply to the rights of broadcasting organizations as to copyright.
就输入内容而言，前文对版权的讨论也适用于广播组织的权利。
 - The rights of broadcasting organizations also apply to those programme-carrying signals that carry AI productions or the performances thereof,
 - 广播组织的权利也适用于传输节目、携带人工智能生成内容或表演的信号

INSTEAD OF A SUMMARY

与其做总结

Artificial intelligence is like fugu
人工智能如同河豚

If well-
prepared,
it is the most
delicious dish
经过正确烹调,
可以成为珍馐



If not,
it paralyzes
and
kill you
利用不当, 会自
食其果



Be sure that both the recipe and the cook are good!
要确保合理开发利用人工智能! (正若要使用合适的原材料和手段烹饪河豚)



THANK YOU
谢谢

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