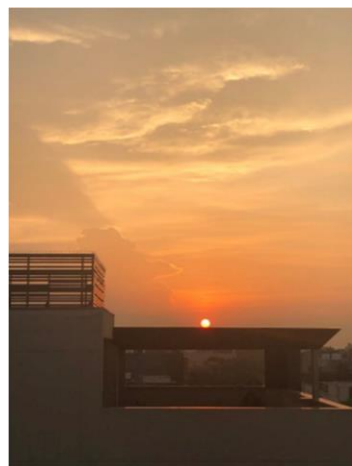# 人工智能生成内容的定性——兼评文生图第一案
华东政法大学 陈绍玲

Defining AI-Generated Content
—A Review of the First Copyright Case on Text-to-Image Generation
CHEN Shaoling, ECUPL

比较法上对人工智能生成物的定性
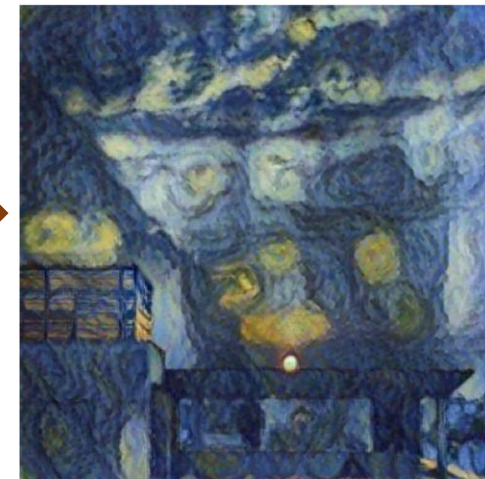## Defining AI-generated content through the lens of comparative law

萨尼（Sahni）的原图
Original drawing by Sahni

要求人工智能RAGHAV参考的对象
Reference for AI tool "RAGHAV"

输入风格转换相关参数
Style transformation parameters

萨尼的主张："人工智能RAGHAV只能按照要求，机械地应用颜色、造型和风格，与Adobe Photoshop根据人的指令处理照片没有区别" | Sahni's claim: "RAGHAV, which is an artificial intelligence tool, can only mechanically apply colors, shapes, and styles as instructed, which is no different from using Adobe Photoshop to process photos under human instruction."

美国版权局复审委员会的反驳："RAGHAV对萨尼的照片以《星空》风格进行阐释，源于人工智能的工作方式和对其进行的图像生成训练，而不是源于萨尼的特定贡献或发出的指令" | The rebuttal from the US Copyright Office Review Board: "RAGHAV's interpretation of Sahni's photo in the style of *The Starry Night* is based on the way artificial intelligence works and the image generation training it underwent, rather than Sahni's specific contribution or instruction given."

人工智能"文生图"第一案（北京互联网法院2023年）
The first-ever case on AI text-to-image generation (Beijing Internet Court, 2023)

原告希望画出一幅在黄昏的光线条件下具有摄影风格的美女特写，其随即在Stable Diffusion模型中输入了提示词，提示词中艺术类型为"超逼真照片""彩色照片"，主体为"日本偶像"并详细描绘了人物细节如皮肤状态、眼睛和辫子的颜色等，环境为"外景""黄金间""动态灯光"，人物呈现方式为"酷姿势""看着镜头"，风格为"胶片纹理""胶片仿真"等，同时设置了相关参数，根据初步生成的图片，又增加了提示词、调整了参数，最终选择了一幅自己满意的图片。 | The plaintiff's aim was to create a close-up portrait of a beautiful woman with photographic style under twilight lighting. They input prompt words into the Stable Diffusion model, specifying the art type as "ultra-realistic color photo," the subject as a "Japanese idol," and providing detailed descriptions of character features such as skin complexion, eye colors, and braids. The environment features an "outdoor scene" during the "golden hour" with "dynamic lighting." The character is to be depicted in a "attractive pose," looking at the camera. The style incorporates elements such as "photographic film-like texture." Additional parameters and prompt words were used, and adjustments were made based on the initial images until a portrait to the plaintiff's satisfaction was chosen.

主审法官："人工智能模型如同作者的画笔或照相机，是作者（此处指使用者）的创作工具。" | Presiding judge: "The artificial intelligence model is like a brush or camera, which is a creative tool for the creator (here referring to the user)."

作者与创作工具之间的关系 | The relationship between the creator and the creative tool

《著作权法实施条例》第3条： | Article 3, *Implementation Regulation of Copyright Law*:
著作权法所称创作，是指直接产生文学、艺术和科学作品的智力活动。 | For the purposes of the Copyright Law, "creation" shall refer to intellectual activities from which literary, artistic and scientific works are directly derived.

人而非工具，直接产生创造性表达 | Creative expressions are directly derived from (intellectual activities of) humans, not tools

相机是人直接表达的工具 | The camera is a tool for direct human expression

电脑和画笔是人直接表达的工具 | The computer and the stylus are tools for direct human expression

Stable diffusion是人直接表达的工具吗? | Is Stable Diffusion a tool for direct human expression?

人工智能"文生图"第一案（北京互联网法院2023年）
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如果人工智能是创作工具 | If artificial intelligence is a creative tool

The plaintiff's aim was to create a close-up portrait of a beautiful woman with photographic style under twilight lighting. They input prompt words into the Stable Diffusion model, specifying the **art type** as "ultra-realistic color photo," the subject as a "Japanese idol," and providing detailed descriptions of character features such as skin complexion, eye colors, and braids. The environment features an "outdoor scene" during the "golden hour" with "dynamic lighting." **The character is to be depicted** in a "attractive pose," looking at the camera. The style incorporates elements such as "photographic film-like texture." Additional **parameters** and prompt words were used, and adjustments were made based on the initial images until a picture to the plaintiff's satisfaction was chosen.

提示词确定
Defining the prompt

工具
Tools

产生唯一表达 | Generate unique expressions

STABLE DIFFUSION

人工智能"文生图"第一案 (北京互联网法院2023年)
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STABLE DIFFUSION

人工智能会产生多个表达 | Artificial intelligence will generate multiple expressions
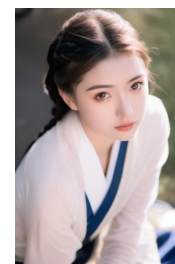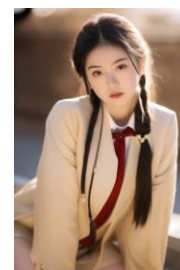
比较法上对人工智能的功能的解释 | Comparative legal interpretation of the functions of artificial intelligence

萨尼声称
Sahni

其构思、创作和选择了基础照片、选择了《星空》作为风格、选择了为风格转化所需的特定数值 | Choices were made regarding the baseline photo, the style with reference to *The Starry Night*, and parameters for image transformation.

上述选择的结合产生了新作品，是其创造性表达和贡献的结果 | The combination of the choices made created new artistic works that are a result of creative expression and contribution.

他的判断使新作品包含了日落、云彩和建筑物的轮廓、占三分之二画面的天空，以及使作品明显呈现梵高《星空》的风格 | The choices made result in the sunset, clouds, the contour of architecture, the sky which covers 2/3 of the frame, and other style features that clearly resemble *The Starry Night*.

美国版权局复审委员会认为
Copyright Office Review Board

画面的表达性因素并非源自萨尼，萨尼只提供了素材和数值，是人工智能程序负责确定如何根据数值整合基础照片和特定风格 | The expressive elements did not come from Sahni, who merely provided the source materials and parameters. The AI program was charged with synthesizing the baseline photo and specific styles based on the parameters.

在哪里出现将日落、云彩、建筑物的轮廓和天空，它们是否会在输入结果中出现，以及色彩如何运用于其中，都不是萨尼控制的 | Sahni did not control where or whether the sunset, clouds, the contour of architecture, and the sky would appear in the output, nor how colors would be applied.

人工智能"文生图"第一案（对提示词的定性）
The first-ever case on AI text-to-image generation (Beijing Internet Court, 2023)

委托人要求画家：男孩肖像，海风拂着他卷曲的秀发，掠过蕾丝衣襟和柔软的红色天鹅绒连身套装，在漆黑之中，惹人怜爱+各种数值 | The client asked the painter to draw *a portrait of a boy, with the sea breeze tousling his curly hair, brushing against the lace collar and soft red velvet outfit, looking adorable in the darkness*, plus various parameters.

用户向人工智能输入提示词：日本偶像，迷人的脸，棱角匀称的脸，完美的皮肤，梦幻般的黑眼睛，红褐色的辫子，均匀，长腿+参数 | The user input prompts to the AI model: *Japanese idol, charming face, well-proportioned features, perfect skin, dreamy black eyes, reddish-brown braids, long legs*, plus various parameters.

思想 | Ideas

画家：按照"自己的意志"，"融入自己的取舍和判断"

The painter, "according to his will", "incorporated his own choices and decisions".

人工智能：按照自己的算法模型进行取舍和判断 | AI made choices and decisions based on its own algorithms.

表达 | Expression

形成的肖像画完全符合委托人要求：是画家完成的表达！
The portrait was completely in line with the client's request. It was the painter's expression!

形成的肖像画完全符合用户要求：是用户还是人工智能完成了表达？ | The portrait was completely in line with the user's request. Was it the user's or the AI model's expression?

《红衣男孩》：托马斯·劳伦斯1825年 | *The Red Boy*, Thomas Lawrence, 1825
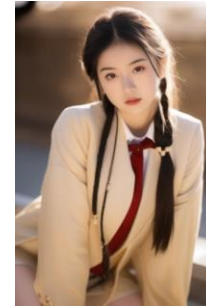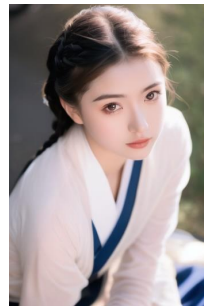
人工智能"文生图"第一案（提示词输入者提供的是思想）
The first-ever case on AI text-to-image generation (the prompt provides the ideas)

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提示词 | Prompt

两者的思想相同 | The prompt and the portrait share the same ideas.

人工智能"文生图"第一案（不断修改提示词的行为也不产生美术表达）

The first-ever case on AI text-to-image generation (Continuously modifying prompts does not produce artistic expression)

文字和美术作品的创造性差异，决定了无论操作者如何通过提示词修改图片，也无法产生操作者的美术表达 | The differences between literary and visual arts mean that no matter how users modify the image output with input prompts, the model cannot reflect their exact artistic expression.

文字作品：遣词造句、故事情节 | Written works: wording, phrasing, story plot

美术作品：线条、颜色、结构、轮廓 | Artworks: lines, colors, structure, contour

保护人工智能生成物可能导致中外保护不平等 | Protecting AI-generated content may lead to unequal protection between China and other countries

"文学和艺术作品"一词包括文学、科学和艺术领域内的一切成果，不论其表现形式或方式如何，诸如……图画……（《伯尔尼公约》第2条第1款） | The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as… works of drawing… (Article 2.1, *Berne Convention*)

本条所提及的作品在本同盟所有成员国内享受保护。（《伯尔尼公约》第2条第6款） | The works mentioned in this Article shall enjoy protection in all countries of the Union. (Article 2.6, *Berne Convention*)

就享有本公约保护的作品而论，作者在作品起源国以外的本同盟成员国中享有各该国法律现在给予和今后可能给予其国民的权利，以及本公约特别授予的权利。 | Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

享有和行使这些权利不需要履行任何手续，也不论作品起源国是否存在保护。（《伯尔尼公约》第5条第1、2款） | The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. (Article 5.1 & 5.2, *Berne Convention*)

保护人工智能生成物可能导致中外保护不平等 | Protecting AI-generated content may lead to unequal protection between China and other countries

中国认为人工智能生成的内容是
《伯尔尼公约》第2条第1款列举的作品 | China acknowledges AI-generated content as works enumerated in Article 2.1 or the *Berne Convention.*

中国**必须**保护以其他成员国
为起源国的同类内容 | China **must** protect the same category of content from other member countries of origin.

美国否认人工智能生成的内容是
《伯尔尼公约》第2条第1款列举的作品 | The US denies AI-generated content as works enumerated in Article 2.1 or the Berne Convention.

美国不保护在美国用
用人工智能生成的此类内容 | The US does not offer protection for content generated by AI in the US.

美国**无义务**保护在中国
用人工智能生成的此类内容 | The US is **not obligated** to offer protection for content generated by AI in China.

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谢谢
Thank you