



BETWEEN INDEPENDENT CREATION AND INTELLECTUAL CHOICE: A TWO-TIER APPROACH TO AI AND COPYRIGHT IN CHINA AND THE EU

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The Core Problem: AI's Challenge to Copyright Foundations

The Disruption: Generative AI blurs the lines of traditional copyright, challenging the foundational concepts of "work," "originality," and "authorship."

The Central Question: Under what conditions do AI-generated and AI-assisted outputs qualify for copyright protection?

The Jurisdictional Puzzle: Leading jurisdictions are providing different answers, creating legal uncertainty.

The Research Gap: Conceptual oscillation between originality and authorship confuses the applicable legal standards.

This Presentation: Proposes a unifying analytical framework—the Two-Tier Matrix—to systematically compare the divergent approaches of China and the EU.

Introducing the Analytical Tool: The Two-Tier Matrix

TIER	CORE CONCEPT	JURISDICTIONAL EMPHASIS	KEY QUESTION
TIER 1	Objective Originality <i>Independent Creation & Minimal Creativity</i>	China	Is there demonstrable human intellectual input and is the output independently created with a minimal spark of creativity?
TIER 2	Subjective Authorship <i>Author's Own Intellectual Creation</i>	EU	Does the final work reflect the free and creative choices of a natural person, imprinting it with their personal stamp?

Judicial Practice: The Chinese Trajectory (From Restrictive to Pragmatic)

Early Restrictive Phase:

- *Beijing Film Law Firm v. Baidu* (2019): No protection. AI-generated article lacked a identifiable **natural person author**. Fails both tiers of the matrix.

The Pragmatic Shift:

- *Tencent/Dreamwriter* (2019): **Protected**. Human team's input in data, theme, and style satisfied originality. Human authorship found in preparatory/supervisory role. **Satisfies Tiers 1 & 2.**
- *Li v. Liu (AI Text-to-Picture)* (2023): **Protected**. User's prompts, keyword selection, and parameter tuning constituted significant intellectual contribution and aesthetic judgment. **Satisfies Tiers 1 & 2.**

Conclusion:

Chinese courts have lowered the Tier 1 threshold, accepting that limited but demonstrable human involvement can satisfy both originality and authorship requirements.

Judicial Practice: The EU's Consistent Human- Centrism

The Foundational Stones (CJEU Jurisprudence):

Infopaq (C-5/08): Established "author's own intellectual creation" as the universal standard.

Painer (C-145/10): Originality found in photographer's free choices (angle, lighting, etc.), even in a portrait.

Football Dataco (C-604/10): Rejected "sweat of the brow." Purely functional, non-creative compilation denied protection.



Consolidation:

Cofemel (C-683/17): Originality is the sole requirement for protection; no "artistic merit" test.

Brompton Bicycle (C-833/18): If form is dictated by technical function, leaving no room for creative choice, no copyright exists.

Conclusion:

The EU maintains a high, stable Tier 2 threshold. Protection is granted only where the final output bears the imprint of a human author's creative choices.

Conclusion (1/2) - Confirmed Hypothesis & Defined Thresholds

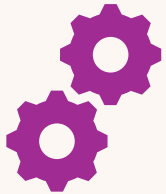
Hypothesis Confirmed: China's user-oriented framework offers greater flexibility for AI-related works, while the EU prioritizes doctrinal purity.

Defined Thresholds:

- **China:** Employs an **objective originality test (Tier 1)**. Protection is granted when any stage of the process shows human intellectual input.
- **EU:** Maintains a **personality-based conception of authorship (Tier 2)**. Protection requires the direct expression of a natural person's free and creative choices.

The Two-Tier Matrix successfully reframes this divergence, providing clarity and a robust tool for future comparative analysis.

Conclusion (2/2) - Future Pathways & Unresolved Questions



The Road Ahead:

China's Path: Points towards the pragmatic integration of AI as a tool within the existing copyright framework.

EU's Path: Seeks to preserve the integrity of a human-centered authorship model against autonomous machine creativity.



The Unresolved Dilemma: Both systems struggle with **fully autonomous AI-generated works** (where human involvement is minor or non-existent).



Future Reforms: The tension suggests that traditional copyright may be insufficient. Future debates may need to consider:

Sui Generis protection regimes for AI outputs.

Neighboring Rights for AI investors/producers.

A redefinition of "author" to include those who make "arrangements necessary for creation" in an AI context.