Beijing Internet Court
A Civil Judgment

(2023) Jing 0491 Min Chu No. 11279 (2023)

Plaintiff: LI

Agent ad litem 1: Sun Yan, lawyer at Beijing Tian Yuan Law Firm

Agent ad litem 2: Li Yufan, lawyer at Beijing Tian Yuan Law Firm

Defendant: LIU

The case of LI (the plaintiff) v. LIU (the defendant) over infringement of the right of authorship and the right of dissemination on the information network was filed by the Court on May 25, 2023. A collegial panel was formed in accordance with the law, with ordinary procedures being applied. After a pre-trial meeting, a public hearing was held on August 24, 2023. The plaintiff LI and his agents Sun Yan and Li Yufan, and the defendant LIU attended the trial via the e-litigation platform of the Court. The case has now been concluded.

The plaintiff LI requested that: 1. The defendant issue a public statement on the baijiahao account involved to apologize to the plaintiff and eliminate the impact of the infringement; 2. The defendant compensate 5,000 yuan for the plaintiff's economic losses. Facts and cause of case: On February 24, 2023, the plaintiff generated the picture involved by inputting prompt words in Stable Diffusion, an open source software, and then published the picture on Little Red Book, a social media platform, under the title "Spring Breeze Brings Tenderness." Later, the plaintiff found that the picture was used in an article titled "Love in March, in the Peach Blossoms," which was published by the defendant under the baijiahao account "******" on March 2, 2023. The defendant had used the picture without the plaintiff's permission and even removed the plaintiff's watermark on Little Red Book, causing viewers to believe that the defendant was the author of the picture. The defendant's behavior seriously violated the plaintiff's right of authorship and of dissemination on the information network. The defendant should compensate the plaintiff for his economic losses and make an apology to eliminate the impact. Accordingly, the plaintiff filed a lawsuit to the Court and requested the above.

The defendant LIU argued that: 1. The defendant searched the Internet and obtained the picture involved and used it as an illustration for his original poem "Love in March, in the

Peach Blossoms." The defendant cannot provide the specific source of the picture, nor can he explain the watermark on it. It is uncertain whether the plaintiff has the right to the picture involved; 2. The content published by the defendant is mainly about the original poem, not the picture involved. The picture is not for commercial use, so the defendant has no intention of infringement; 3. If the Court determines that the defendant's behavior constitutes infringement, the defendant will apologize to the plaintiff. However, the amount of economic compensation claimed by the plaintiff is too high; the market price of AI-generated images is rather low. The defendant is seriously ill and unable to pay the compensation. Accordingly, the defendant requested the Court to consider the actual situation while making a judgment.

The parties submitted evidence based on their statements, and the Court organized the parties to conduct evidence exchange and cross-examination. The Court confirmed the evidence that the parties had no objection to and corroborated it in the file. Regarding the facts of the case, the Court found that:

On February 26, 2023, the plaintiff posted the picture involved (see Figure 6) on his Little Red Book account "****" (Little Red Book ID: ******), and the title of t -he post was "Spring Breeze Brings Tenderness." Apart from the picture involved, the post included five other pictures,with hashtags #AI#[topic]##AIillustration#AIpainting#p -hoto #girl#photography#spring#beauty. Through investigation, it is found that the plain -tiff is able to log in to the account and check the picture involved by obtaining a ve -rification code through his mobile phone.

The plaintiff claimed that the picture was generated via Stable Diffusion on February 24, 2023. He submitted a video that demonstrates the process of generating the picture involved. The steps are as follows:

1. Go to bilibili.com, search for the user "秋葉 aaaki", open the video titled "[AI Art Generator] Stable Diffusion whole package v4.2 released! Accelerated, extract and ready-to-use, no more out of memory, paint with AI in 3 mins...", click the link und -er the video https://pan.baidu.com/s/1sVmVqA2CGUsZwyRdjoA5Vg and download the zip file "sd-webui-aki-V4.2.7z." Unzip it and open the file "A User Agreement.txt", which says: "This package is only used for AIGC learning. It is based on the open s -ource program Stable Diffusion Webui on Github and provides an operating environme -nt for the algorithm. Using this package means that you have read and agree to the

following user agreement: You shall not carry out behaviors including but not limited to the following, nor shall you facilitate any behavior that violates laws and regulation -s: Opposing the basic principles stipulated in the Constitution; Endangering national s- ecurity, leaking state secrets, subverting state power, or undermining national unity; Da -maging national honor and interests; Inciting ethnic hatred and ethnic discrimination, and undermining ethnic unity; Undermining national religious policies, and promoting c -ults and feudal superstitions; Spreading rumors, disrupting social order, and undermini- ng social stability; Spreading information on obscenity, pornography, gambling, violenc- e, murder, terror or instigating crimes; Insulting or slandering others and infringing up on the legitimate rights and interests of others; Carrying out any behavior that violates the 'seven base lines'; Other things prohibited by laws and administrative regulations. All consequences and responsibilities arising from any violation of laws and regulatio -ns in the generation, collection, processing, use of your data and other related matters shall be borne by you."

2. Open "A launcher.exe", and the homepage is shown in Figure 1. Select version, and click Start.
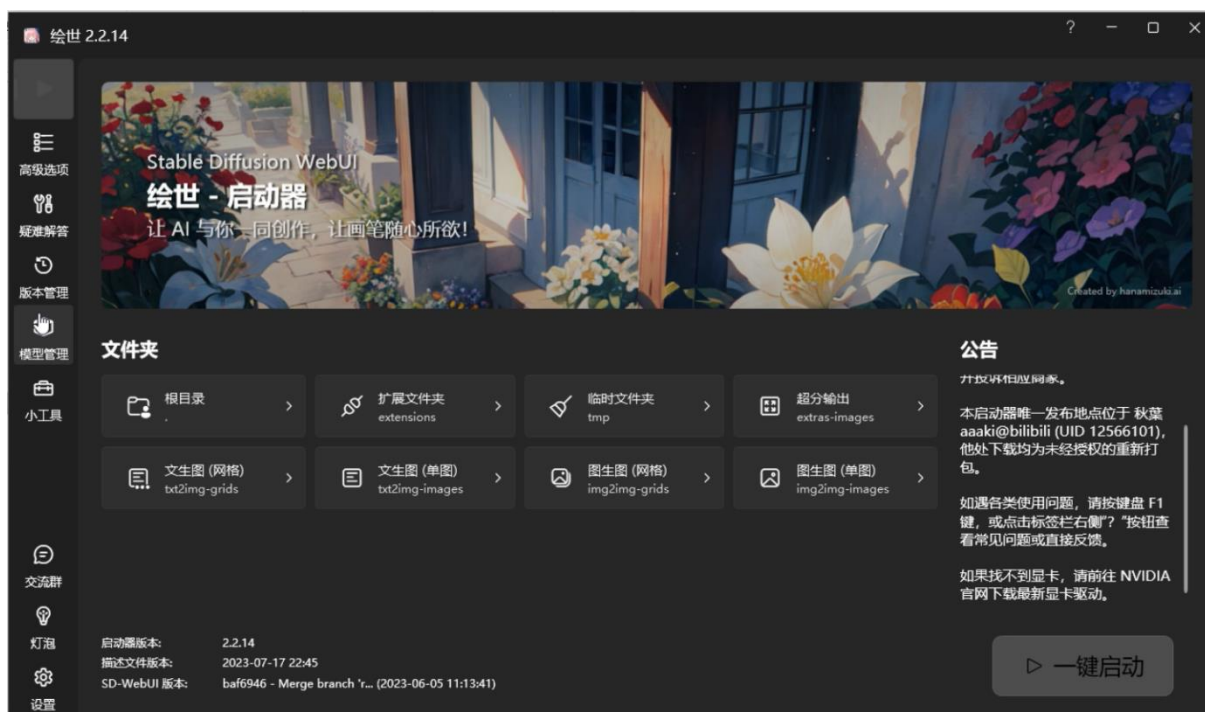
(Figure 1)

3. Go to bilibili.com again, search for the user "K43", open the article titled "Sta

-ble Diffusion Art Models help you get the beautiful Asian/Chinese girl portraits", cop -y the URL "https: //huggingface.co/dcy/AsiaFacemix/tree/main" in the article and open it in the browser, download the model packages "AsiaFacemix-pruned-fix.safetensors" and "lora-hanfugirl-v1-5.safetensors".

Move "AsiaFacemix-pruned-fix.safetensors" to "models" – "Stable-diffusion", and c -hange the model of the launcher (Stable-diffusion model) to "AsiaFacemix-pruned-fix.s -afetensors". Move "lora-hanfugirl-v1-5. safetensors" to "extensions" – "sd-webui-additi- onal-networks" – "models" – "lora", and change Model 1 in "Additional-Networks" to "lord-hanfugirl-v1-5.safetensors".

4. Enter the following prompt words:"(ultra photorealistic:1.3)，extremely high qua -lity highdetail RAW color photo,in locations,japan idol,highly detailed symmetrical attr -active face,angular simmetrical face,perfectskin,skin pores,dreamy black eyes,reddish-br- own plaits hairs,uniform,long legs,thighhighs,soft focus,(film grain,vivid colors,film emu -lation,kodak gold portra 100, 35mm, canon50 f1.2)，Lens Flare,Golden Hour,HD,Cine- matic,Beautiful Dynamic Lighting". Enter the following negative prompt words:"((3d,re- nder,cg,painting,drawing,cartoon,anime,comic:1.2))，bad anatomy,bad hands,text,error,miss -ing fingers,extra digit,fewer digits,cropped,worst quality,signature,watermark,username,bl -urry,artist name,(longbody)，bad anatomy,liquid body,malformed,mutated,badproportions, uncoordinated body,unnaturalbody,disfigured,ugly,gross proportions,mutation,disfigured,def -ormed,(mutation),(child:1.2)，b&w,fat,extra nipples,minimalistic,nsfw,lowres,badanatomy, bad hands,text,error,missing fingers,extra digit,fewer digits,cropped,worst quality,low qua -lity,normal quality,jpeg artifacts,signature,watermark,username,blurry,disfigured,kitsch,ugl- y,oversaturated,grain,low-res,Deformed,disfigured,poorly drawn face,mutation,mutated,extr- a limb,ugly,poorly drawn hands,missing limb,floating limbs,disconnected limbs,malforme -d hands,blur,out of focus,long neck,long body,ugly,disgusting,poorly drawn,childish,muti -lated,mangled,old,surreal,text,b&w,monochrome,conjoined twins,multiple heads,extra legs, extra arms,meme,elongated,twisted,fingers,strabismus,heterochromia,closed eyes,blurred,wa -termark,wedding,group,dark skin,dark-skinned female，，tattoos,nude,lowres,badanatomy, badhands,text,error,missing fingers,extra digit,fewer digits,cropped,worst quality,low quali -ty,normal quality,jpeg artifacts,signature,watermark,username,blurry". Among them, "((3

d render, CG, painting, drawing, cartoon, anime, comic: 1.2))" comes from the defendant himself, and the rest are directly copied from an online forum.

5. Change the number of iteration steps to 33, height to 768, CFG scale to 9, random seed to 2692150200, and click the "Generate" button. The operation interface is shown in Figure 2, and the result generated is shown in Figure 3.
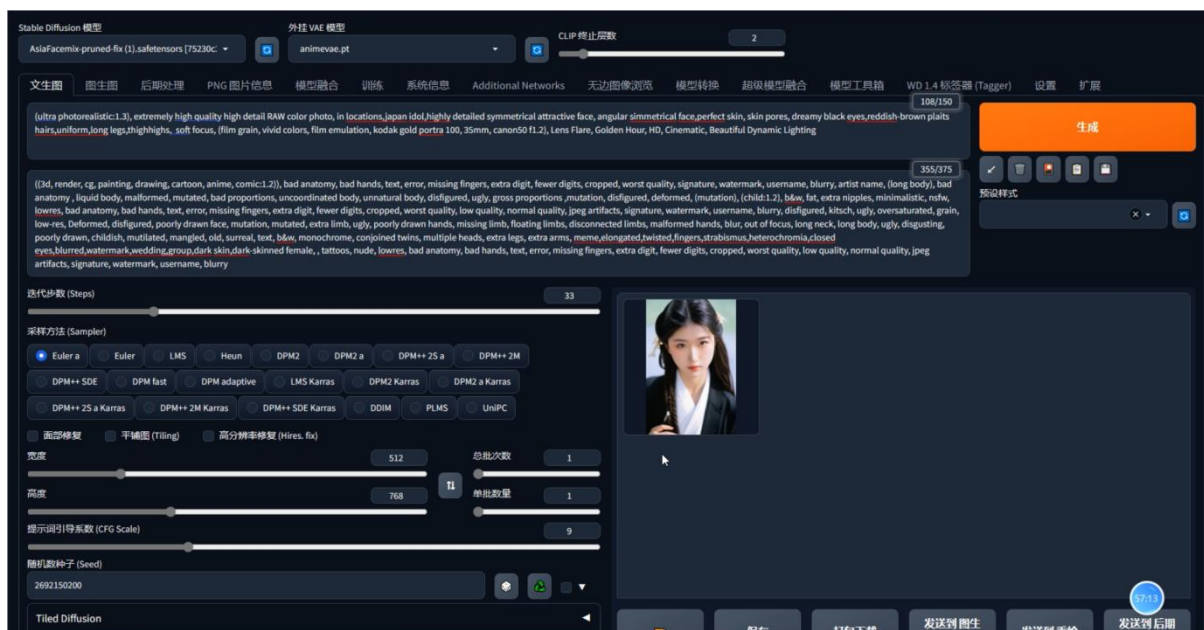
(Figure 2)

(Figure 3)

6. With the above parameters unchanged, modify the weight of "lord-hanfugirl-v1-5.safetensors" in "Addition-Networks" to 0.75. The result is shown in Figure 4.

(Figure 4)

7. With the above parameters unchanged, modify random seed to 2692150199. The result is shown in Figure 5.

(Figure 5)

8. With the above parameters unchanged, add the following prompt words: "shy,el -egent,cute,lust,cool pose,teen,viewing at camera,masterpiece,best quality", The result is shown in Figure 6, which is the picture involved.

(Figure 6)

Through the investigation in court, it is found that the plaintiff can generate a different picture by changing the prompt words or parameters.

The plaintiff claims that the picture involved is a work of art, and if the Court finds that it is not a work of art, the plaintiff would maintain that it is an "intellectual achievement consistent with the characteristics of the work." According to the plaintiff, the picture involved constitutes a work of art as it reflects originality in the following aspects:

First, the model selected. Essentially, Stable Diffusion is used to interpret and create out of a highly blurred mosaic picture based on the model and the prompt words input by the user. The model will determine the materials available for the final picture, and affect the genre and style of the work. At present, there are tens of thousands of free models provided by open source authors on the Internet, and anyone can download the models freely; so the model used for creation is chosen by the user himself, and each user chooses a model out of his own taste.

Second, the prompt and negative prompt words used. Judging from the prompt words entered by the plaintiff, he uses this pattern: art type + subject + environment + composition + style. Art type refers to the type of works, such as watercolor painting, illustration, pixel art, film art, etc.; the subject can be a person, an object, or an animal; environment refers to the environment where the subject is located, which can be a natural environment or lighting effects; composition refers to the location of the focus and the direction which the subject faces; style consists of several elements, such as the times and the referenced artist. As for the picture involved, the plaintiff shows his aesthetic taste when trying to use the prompt words to

present a close-up of a beautiful woman under the dusk light. Therefore, the art type is expressed via prompt words "ultra photorealistic" and "color photo," the subject is "Japan idol" and the depiction of facial details such as skin, eyes, braids, etc., the environment is "in locations," "golden hour" (an hour before sunset gives the best light), "dynamic lighting," the composition is "cool pose," "browsing in front of the camera" (originally meaning viewing at camera), and the style is "film texture," "film simulation." The prompt words are selected and entered by the plaintiff according to the needs of creation, which can reflect the plaintiff's choice, selection, arrangement, and design.

Negative prompt words refer to the art type, subject, environment, and style that the user does not wish to show in his work. Since the work involved is a picture, so the plaintiff uses negative prompt words like "painting," "cartoon," and "animation", elements that will not appear in the work. It is also based on the plaintiff's creative experience.

Third, the parameters generated. The parameters mainly include sampler, definition, and CFG scale. Different parameter settings may produce different results. For example, the plaintiff finds that the aspect ratio will affect the result of the photos of real human beings. The aspect ratio 1:1 will produce a close-up of real human beings, the aspect ratio 3:2 a half-body photo, the aspect ratio 2:1 a full-body photo, and the aspect ratio 1:2 a photo of two figures. Those ratios are obtained by the plaintiff through multiple uses of the software. They are the result of the plaintiff's intellectual labor and reflect the plaintiff's originality.

Therefore, the plaintiff believes that the model, the prompt and negative prompt words, and the parameters all reflect the choice, selection, arrangement, and design made by the plaintiff; they are the result of the plaintiff's intellectual labor, which is obviously original. In addition, from an objective perspective, the picture involved obviously conforms to the characteristics of a work; and it has garnered many views and likes after being posted by the plaintiff on Little Red Book, which means that it can be identified as a work with originality according to the standard of the general public.

The defendant registers the account "******" on baijiahao (baijiahao ID:********) and is the user of it. By March 17, 2023, the account had obtained 210,000 likes and 46,000 followers. On March 2, 2023, the defendant published an article titled "Love in March, in Peach Blossoms" using the account. The text of the article is a poem written by the defendant himself, and five pictures are used as illustrations. The first illustration is the picture involved,

which contains no watermark. The article has 26 comments, and at the bottom of the article it says: "Original poetry by * * * * * * * *, pictures edited by * * * * * * * *. The pictures are obtained from the Internet; the author will delete the pictures and apologize should there be any infringement." Upon inquiry, the defendant cannot specify the specific source of the pictures.

The plaintiff claimed that the defendant had cut off his signature watermark on Little Red Book, and submitted a video of how to download the picture involved on Little Red Book. According to the video, when the picture involved is downloaded and viewed again, it will contain the watermark of "Little Red Book" and "*******." "Little Red Book" is the name of the platform and "*******" is the defendant's user ID on the platform. Upon inquiry, the defendant said that he could not remember whether he had removed the watermark of the picture involved.

The plaintiff believes that the defendant used the picture involved without his permission and cut off his signature watermark on Little Red Book, which infringed his right of authorship and right of dissemination on the information network regarding the picture.

The plaintiff also submitted the "CreativeML Open RATL+ + -M License" from "stable diffusion" on GitHub, which says that "6.The Output You Generate. Except as set forth herein,Licensor claims no rights in the Output You generate using the Model. You are accountable for the Output you generate and its subsequent uses. No use of the output can contravene any provision as stated in the license."

Upon inquiry, the plaintiff said that he had claimed for economic losses based on statutory compensation, which is decided by taking into account factors such as the cost of learning the software, the plaintiff's intellectual investment, the aesthetics of the picture involved, the number of the defendant's followers, and the circumstances of the infringement.

The defendant submitted the following evidence to prove that the market price of AI-generated images is much lower:

1. A screenshot of product information on goofish.com, which shows that product: "12,000+ AI-generated pictures of beautiful women...", price: 9.9 yuan; product: "nearly 20,000 AI-generated pictures of persons...", price: 4.99 yuan; product: "AI-generated pictures (3 yuan/set)...", price: 3 yuan;

2. A screenshot of product information on pinduoduo.com, which shows that product:

"AI-generated avatar, real-person photo, 3D portrait animation, cartoon converted to hand-painted avatar, Disney style", price: 5 yuan (min.);

3. A screenshot of article posted by Zhihu user Quanquan, which says that "100 AI-generated wallpapers of beautiful women with no watermarks, help yourself";

4. A screenshot of tuchong.com, which shows that one picture is priced at 40 yuan, five pictures are priced at 130 yuan, and ten pictures are priced at 230 yuan.

The above facts are supported by evidence such as the original electronic file of the picture involved, screenshots of Little Red Book, a video reproducing the generation process of the picture involved, a video of downloading the picture involved on Little Red Book, and screenshots of goofish.com, pinduoduo.com, zhihu.com, and tuchong.com, and other supporting evidence such as the parties' statements, pre-trial meeting transcripts, and court transcripts.

According to the Court, based on the two parties' pleadings and the facts ascertained, the issues of this case are: 1. Whether the picture "Spring Breeze Brings Tenderness" constitutes a work and what type of work it constitutes; 2. Whether the plaintiff owns the copyright on the picture involved; 3. Whether the accused behavior constitutes an infringement and whether the defendant should bear legal responsibility for it. The Court will comment on them one by one.

1. Whether the picture "Spring Breeze Brought Tenderness" constitutes a work and what type of work it constitutes

According to Article 3 of the *Copyright Law of the People's Republic of China* (hereinafter referred to as the *Copyright Law*), "The works mentioned in this Law refer to intellectual achievements that are original and can be expressed in a certain form in the fields of literature, art, and science," when examining whether the object for which the plaintiff claims copyright constitutes a work, the following elements should be considered: 1. Whether it falls under the realm of literature, art, or science; 2. Whether it is original; 3. Whether it is expressed in a certain form; 4. Whether it is an intellectual achievement. In this case, the pictures involved is no different from the photos and paintings that people usually see; obviously it falls under the category of art and is expressed in a certain form, so elements 1 and 3 are met.

"Intellectual achievements" refer to the results of intellectual activities, so the work

should reflect the intellectual input of a natural person. In this case, the plaintiff used the hashtag "AI illustration" when publishing the picture involved; and the plaintiff could reproduce the process of generating the picture involved using the Stable Diffusion model and the prompt words and parameters set by himself. Unless there is contrary evidence, it can be found that the picture "Spring Breeze Brings Tenderness" is generated by the plaintiff using AI. According to public information and relevant research, the Stable Diffusion model is trained from a large number of pictures and their corresponding text descriptions on the Internet. Based on the text instructions, the model can use the correspondence between the semantic information in the text and the pixels in the picture to generate a picture that matches the text. This picture is not a ready-made one that can be obtained through a search engine, nor is it an arrangement or combination of various elements preset by the software designer. In layman's terms, the Stable Diffusion model works in a way that a human does: it acquires some abilities and skills through learning and accumulation, and it can generate a picture based on the text descriptions input by humans - drawing the lines and doing the colors, and presenting man's creative ideas in a tangible way. In this case, the plaintiff wanted a close-up of a beautiful woman under dusk light, so he entered the following prompt words into the Stable Diffusion model: "ultra photorealistic" and "color photo" for the art type; "Japan idol" for the subject, along with detailed description of the character such as skin, eyes, and braid color; "in locations", "golden hour", and "dynamic lighting" for the environment; "cool pose" and "viewing at camera" for the way the character is presented; and "film texture" and "film simulation" for the style. The parameters were also set. Based on the initially generated picture, the plaintiff added some prompt words, modified the parameters, and finally got the picture he wanted. From the time the plaintiff had an idea about the picture to his final selection of the picture involved, the plaintiff did some intellectual investment, such as designing the presentation of the character, selecting prompt words, arranging the order of prompt words, setting parameters, and selecting the picture that he wanted. The picture involved reflects the plaintiff's intellectual investment, so it meets the element of "intellectual achievement".

Of course, not all intellectual achievements are works; only those with "originality" are. Generally speaking, "originality" requires that the work be completed independently by the author and reflect the author's personalized expression. "Mechanical intellectual

achievements" are excluded. For example, if a work is completed based on a certain order, formula, or structure, different people will get the same result; as the expression is singular, the work does not have originality. And one has to decide according to the specific situation whether an AI-generated picture reflects the author's personalized expression. Generally speaking, when people use the Stable Diffusion model to generate pictures, the more different their needs are and the more specific the description of picture elements, layout, and composition is, the more personalized the picture will become. In this case, there are identifiable differences between the picture involved and the prior works. In terms of the generation process of the picture involved, the plaintiff did not draw the lines himself, or instruct the Stable Diffusion model everything on how to draw the lines and do the colors; the lines and colors that constitute the picture involved are basically done by the Stable Diffusion model, which is very different from the conventional way of people using brushes or software to draw pictures. However, the plaintiff used prompt words to work on the picture elements such as the character and how to present it, and set parameters to work on the picture layout and composition, which reflects the plaintiff's choice and arrangement. The plaintiff input prompt words and set parameters and got the first picture; then he added some prompt words, modified the parameters, and finally got the picture involved. Such adjustment and modification also reflect the plaintiff's aesthetic choice and personal judgment. During the trial, the plaintiff generated different pictures by changing the prompt words or the parameters. One can infer that with this model, different people can generate different pictures by entering different prompt words and setting different parameters. Therefore, the picture involved is not a "mechanical intellectual achievement". Unless there is contrary evidence, it can be found that the picture involved is independently completed by the plaintiff and reflects the plaintiff's personalized expression. In summary, the picture involved meets the element of "originality".

A new generation of generative AI technology is being used by more people for creation. The Stable Diffusion model and models with similar functions can generate beautiful pictures based on text descriptions. Many people, including those without drawing skills, are trying to use these new models to present their creativity and designs in a tangible way; and the models have greatly improved the efficiency of picture creation. The generative AI technology has changed the way people create. Just like many other technological advances in history, the process of technological development is the process of outsourcing human work to machines.

Before the advent of cameras, people needed superb painting skills to reproduce an object perfectly; then the cameras made it easier to record the image of an object. Nowadays, the camera of smartphones is getting better and easier to use. However, as long as the photos taken with a smartphone reflect the photographer's original intellectual investment, they will constitute photographic works and are protected by the *Copyright Law*. The development of technologies and tools require less human investment, but the copyright system should remain in use in order to encourage the creation of works. Before the emergence of the AI model involved, people needed to spend time and energy learning how to paint, or to consign others to paint for them. In the second scenario, the painter will draw the lines and fill in the colors upon the client's request to complete a work of fine art. And the person who draws is normally considered a creator. This is similar to the use of AI models to generate pictures, but there is one major difference here: the creator has his own will and he will use some judgment when painting for the client. Currently, the generative AI model has no free will and is not a legal subject. Therefore, when people use an AI model to generate pictures, there is no question about who is the creator. In essence, it is a process of man using tools to create, that is, it is man who does intellectual investment throughout the creation process, the not AI model. The core purpose of the copyright system is to encourage creation. And creation and AI technology can only prosper by properly applying the copyright system and using the legal means to encourage more people to use the latest tools to create. Under such context, as long as the AI-generated images can reflect people's original intellectual investment, they should be recognized as works and protected by the *Copyright Law*.

To sum up, the picture involved meets the definition of a work and should be considered as such. As to what type of work it constitutes, the plaintiff claims that it is a work of art; and if the Court does not think so, then it should be seen as "other intellectual achievements that have the characteristics of a work". In judicial practice, when judging the type of a work, the first thing is to determine whether it falls under the types of work listed in the *Copyright Law*. Specifically, the Court should compare the characteristics and expression of the work involved with those listed in the first eight items of Article 3 of the *Copyright Law*. If the work falls under any of the types of works listed in the first eight items, then the Court will identify it as that type of work; and the ninth item "other intellectual achievements consistent with the characteristics of a work" will no longer apply. According to Article 4 of the

Regulations for the Implementation of the Copyright Law of the People's Republic of China: "Fine art refers to paintings, calligraphy, sculptures and other aesthetically significant two-dimensional or three-dimensional works composed of lines, colors, or other methods." In this case, the picture involved is a graphic art work that is composed of lines and colors and is of aesthetic significance, so it is fine art. As there is no need to apply the "other works clause" to protect the picture involved, it is not "other intellectual achievements that have the characteristics of a work". To sum up, the picture involved is fine art and shall be protected by the *Copyright Law*.

2. Whether the plaintiff owns the copyright on the picture involved

Paragraph 1 of Article 11 of the *Copyright Law* stipulates that: "Copyright belongs to the author, unless otherwise provided for in this Law." Article 11 of the *Copyright Law* stipulates that: "An author is a natural person who creates a work. The author is the natural person who creates the work. For works hosted by a corporate or unincorporated organization, created on behalf of the will of the corporate or unincorporated organization, and for which the corporate or unincorporated organization assumes responsibility, the corporate or unincorporated organization shall be regarded as the author." It suggests that an author can only be a natural person, a corporate or unincorporated organization; that is consistent with the civil subjects stipulated in the Civil Code. Therefore, an artificial intelligence model cannot be deemed as an author under China's copyright law. As a result, although the picture involved is "drawn" by the artificial intelligence model involved, the model is not the author of the picture.

The designer of the artificial intelligence model involved neither had the intention to create the picture involved, nor did he preset the content generated afterwards. He did not involve in the generation process of the pictures involved; so in this case, he is only a producer of the creation tool. By designing the algorithm and model and using a large amount of data to "train" it, the designer has equipped the AI model with the ability to autonomously generate content in response to different needs. The designer has undoubtedly done some intellectual investment during that process, but such investment has gone to the design of the AI model, that is, the production of a "creation tool", not the picture involved. Therefore, the designer of the AI model involved is not the author of the picture involved.

In addition, according to the evidence in record, the designer of the AI model involved states in the license it provided that it "does not claim rights to the output [of the model]." It

can be determined that the designer claims no right in relation to the output of the model.

As mentioned above, the plaintiff is the one who directly set up the AI model involved as needed and finally selected the picture involved. The picture involved is generated directly due to the plaintiff's intellectual investment and it reflects the plaintiff's personalized expression. Therefore, the plaintiff is the author of the picture involved and owns the copyright on it.

It should be noted that although the Court finds that the plaintiff, as the author, owns the copyright on the picture involved, the plaintiff should prominently mark the AI technology or model used in line the principle of good faith and the need to protect the public's right to know. In this case, the plaintiff uses the hashtag "AI illustration", which is enough to let the public know that the content is generated by the plaintiff using AI technology. The Court recognizes this to be a proper practice.

3. Whether the accused behavior constitutes infringement and whether the defendant should bear legal responsibility

In this case, the plaintiff claims that the defendant used the picture involved without his permission and removed his watermark on Little Red Book, which infringed the plaintiff's right of authorship and of dissemination on the information network with regard to the picture involved.

Article 10 of the *Copyright Law* stipulates that: "The right of dissemination on the information network refers to the right to provide the public with works through wired or wireless means so that the public can obtain the works at the time and place of their choice." In this case, the defendant used, without permission, the picture involved as an illustration and posted it on his own account and made it possible for the public to obtain the picture involved at a time and place of their choice, which infringed the plaintiff's right to disseminate the picture involved on the information network.

Article 10 of the *Copyright Law* stipulates that: "The right of authorship refers to the right owned by an author to indicate his or her identity and sign his or her name on the work." An author has the right to sign his or her real name, or pseudonym, or not to sign. In this case, according to the evidence submitted by the plaintiff and the industry practices, the picture involved should contain the watermark of the platform and user ID after being downloaded

from Little Red Book; yet the accused picture used by the defendant contains no such watermark. It can be presumed that the above watermark has been removed, and since the defendant, as the user of the accused picture, cannot explain the specific source of the picture and the removal of the watermark, it can be concluded that the watermark has been removed by the defendant. Although the user ID in the watermark is assigned by the platform, and the watermark also comes from the platform, the corresponding relationship between the user ID and the plaintiff (the user ID appears on the picture involved as a watermark) can serve to indicate the authorship of the latter. In this case, the plaintiff clearly states that he chooses the user ID as his signature, against which the Court has no objection. Therefore, the defendant's removal of the watermark infringed upon the plaintiff's right of authorship and should bear liability for the infringement.

In summary, the defendant infringed the plaintiff's right of authorship and of dissemination on the information network with regard to the picture involved, and should bear civil liabilities such as apology and compensation for losses.

The plaintiff's request that "the defendant issue a statement on the baijiahao account involved to apologize to the plaintiff and eliminate the impact of the infringement" is equivalent to the scope of the impact of the defendant's behavior on the plaintiff, so it shall be supported by the Court.

Article 54 of the *Copyright Law* stipulates that: "In case of infringement of copyright or copyright-related rights, the infringer shall compensate the right holder in accordance with the actual losses suffered by the right holder or the infringer's illegal gains. If it is difficult to calculate actual losses or the illegal income, compensation may be given with reference to the right royalties. If it is difficult to calculate the actual losses, the illegal income, and the royalties, the people's court shall, based on the circumstances of the infringement, award a compensation between 500 yuan and 5 million yuan." In this case, based on the evidence in record, it is difficult to calculate the actual losses of the right holder and the illegal income of

the infringer. As for the royalties for the picture involved, although the defendant submitted screenshots of picture transaction information on some websites, it is unable to determine that those pictures are comparable to the picture involved in terms of originality and usage, so the amount of royalties for the picture involved cannot be determined. Based on the conditions of the picture involved and the circumstances of the infringement involved, the Court decides that the defendant should compensate the plaintiff 500 yuan for the latter's economic losses caused by the alleged infringement.

In summary, in accordance with Paragraph 1 (2) and (12), Article 10, Article 53, and Article 54 of the *Copyright Law of the People's Republic of China*, the Court made the following judgment:

1. Within seven days from the date of this judgment taking effect, the defendant LIU shall issue a statement to apologize to the plaintiff LI on the baijiahao account involved "******" (baijiahao ID: *********). The statement shall last no less than 24 hours to eliminate the impact (The content of the statement shall be reviewed by the Court first. If the defendant fails to do it within the time limit, the Court will publish this judgment in a nationally distributed newspaper or on the official website of the Court, and the expenses shall be borne by defendant.);

2. The defendant LIU shall compensate the plaintiff LI 500 yuan for the latter's economic losses within seven days from the date of this judgment taking effect;

3. The plaintiff LI's other claims shall be dismissed.

If the defendant fails to pay the compensation within the time limit, he shall pay double interest on the debt during the period of delayed performance in accordance with Article 260 of the *Civil Procedure Law of the People's Republic of China*.

The case acceptance fee, which is 50 yuan, shall be paid by the defendant LIU (within seven days from the date of this judgment taking effect).

If any party refuses to accept this judgment, it may submit an appeal to the Court within

fifteen days from the date when this judgment is served and appeal to the Beijing Intellectual Property Court.

<div align="right">

Chief Judge: Zhu Ge

Judge: Yan Jun

Judge: Li Wanxing

November 27, 2023

Judge Assistant: Li Xuqing

Clerk: Shi Chen

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