

How Does Vietnam's IP Law Need To Provide For AI Generated Works?

In the rapidly evolving digital age, the intersection of artificial intelligence (AI) and creative processes presents a unique challenge to traditional notions of copyright. As AI advances with increasingly sophisticated capabilities, it has become a critical component in generating diverse forms of content. In this context, a series of questions arise, requiring deep consideration as to whether works created by AI are eligible for copyright protection. Lawmakers and law enforcement agencies are faced with the necessary task of considering a series of aspects: from determining the originality and copyright status of such works, to the extent of creative input from both humans and AI, and understanding the specific roles AI plays in the creative process. In particular, variations in legal interpretation between different jurisdictions also require special attention.

Recently, the Beijing Internet Court delivered a groundbreaking judgment in a case concerning the alleged copyright infringement of a portrait generated by Li Yunkai using AI technology. This ruling stands as a momentous and somewhat startling decision, marking a historical turning point in the recognition of copyright for works created by AI. This landmark decision is set to lay a crucial foundation for the evolution of intellectual property law in an era increasingly dominated by technological advancements. The significance of this ruling extends far beyond China, resonating in countries like Vietnam, where legal frameworks for AI-generated works are still in their nascent stages of formation and development. This precedent is poised to influence and shape the future of copyright law in the context of rapidly evolving AI technologies.

Background

The case in question involved a portrait created by Stable Diffusion, an open-source AI software, under the guidance of Li Yunkai. When the portrait was used without Li's authorization, he sued, leading to a groundbreaking court decision in that AI-generated content is eligible for copyright protection. The court established that from the beginning to the end of the process – starting with the initial concept and culminating in the selection of the final image – Li Yunkai actively contributed intellectual efforts. He meticulously crafted the subject matter and its portrayal by employing specific prompts to shape the visual layout and composition of the image. These decisions, as per the court's assessment, were reflective of the plaintiff's personal creative vision. Moreover, the court observed that Li Yunkai didn't stop at just producing the initial image using the prompts and settings; he persistently fine-tuned and evolved the image, applying additional prompts and altering the settings as needed. This ongoing process of modification and refinement underscored a significant level of human creativity and involvement, leading the court to dismiss the argument that the image was merely the result of "mechanical intellectual achievement".

This ruling is pivotal, as it addresses the complex question of copyright in the age of AI, a challenge that many jurisdictions, including Vietnam, are currently grappling with.

What Factors Must Vietnam's IP Law Consider for AI-Generated Works?

Human involvement as a key factor: A crucial aspect of the Beijing court's decision is the emphasis on the human creative input. The court recognized the intellectual inputs and creative efforts of the human creator, Li Yunkai, in the process of generating the AI-created portrait. Despite the use of AI, the court recognized the intellectual contributions of the human creator in conceptualizing and refining the AI-generated work. This emphasis on the role of human involvement in AI-generated works marks a significant shift in understanding and acknowledging the collaborative nature of human-AI creativity.

This perspective is vital for Vietnamese lawmakers, suggesting that any legal framework should focus on the human-AI collaboration aspect, ensuring that human creativity and oversight in the AI creation process are adequately recognized and protected.

AI as a tool, not a creator: The court's decision effectively positions AI as a tool in the creative process, similar to how a camera is used in photography. This perspective is vital as it helps in shaping the narrative that AI, while powerful and transformative, is not an independent creator but a medium that augments human creativity. For Vietnam, this means acknowledging that AI, while a powerful and transformative technology, does not replace human creativity but rather augments it. Legal provisions should be designed to reflect this understanding, ensuring that AI is seen as a means to an end and not an autonomous creator.

Determining authorship and copyright: The Beijing Internet Court's ruling clarified that the authorship of AI-generated works belongs to the person who makes the relevant settings to the AI model, in this case, Li Yunkai. This provides a clear guideline on how authorship is determined in the context of AI-generated content, addressing a previously ambiguous area in copyright law. The above approach to authorship — recognizing

the person configuring and directing the AI as the rightful author — is another significant aspect for Vietnam. This approach clarifies that the author is not the AI but the individual who employs it creatively. Vietnamese law should thus ensure that AI-generated works are eligible for copyright protection, provided there is clear evidence of significant human intellectual contribution.

Evolution and flexibility in legal perspectives: The evolution in the Beijing Internet Court's stance since its 2020 ruling reflects the dynamic nature of AI and its implications for law. Vietnamese lawmakers should take this as a cue to develop flexible and adaptable legal frameworks that can evolve with technological advancements, ensuring that laws remain relevant and effective in protecting intellectual property rights in the digital age.

Differentiating creative domains: Recognizing the difference between various types of AI applications, such as between artistic creation and data analysis, is also crucial. Vietnamese legal approaches should be nuanced enough to differentiate between these domains, understanding that each may require different considerations in terms of copyright eligibility and protection.

Final thoughts

The Beijing Internet Court's ruling is more than just a verdict. Above all, this ruling is an affirmation of the irreplaceable role of human intelligence in the age of AI, and of the need for the law to be flexible and adaptable to technological innovations. It emphasizes the need for the law to recognize human creativity in AI-generated work, treat AI as a tool, and be adaptable to future technological changes. As Vietnam shapes its regulatory frameworks in this area, the above considerations will be important in ensuring that AI serves as a catalyst for innovation while respecting and protecting human intellectual property. This case study from China serves not just as a precedent but as a guidepost for Vietnam in its journey towards effective and forward-looking AI-related copyright laws.

**By Nguyen Vu QUAN
Partner & IP Attorney**

Contact

KENFOX IP & Law Office

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

Tel: +84 24 3724 5656

Email: info@kenfoxlaw.com / kenfox@kenfoxlaw.com