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Dear readers,

Are you feeling the Christmas mood? Right before the winter vacation we are out with the last number of GossIP for this 2023, disclosing some remarkable IP cases in China.

The first article deals with the first judgement about a photo generated by an Artificial Intelligence. Whilst a recent decision in USA declared uncopyrightable the art made by AI due to lack of authorship, China goes in the opposite direction. Read the article to understand the sentence!

And about this topic, we wrote something few months ago which basically predicted this sentence... you can find it right before the last contribution.

Another case refers to a trademark infringement which has been punished with a huge damage compensation, confirming the severity of Chinese courts for bad faith and unfair competition violations.

This direction is confirmed by another 2 sentences released by Shanghai People's Court: in the first, the defendant has been condemned to 4.5 years in prison plus a fine of 2 million RMB for counterfeiting Australian "Anchor" and "Fonterra" trademarks. In the second (analyzed in the last article), the Shanghai Court upheld the three-year sentence and RMB 100,000 fine for Bordeaux counterfeiters.

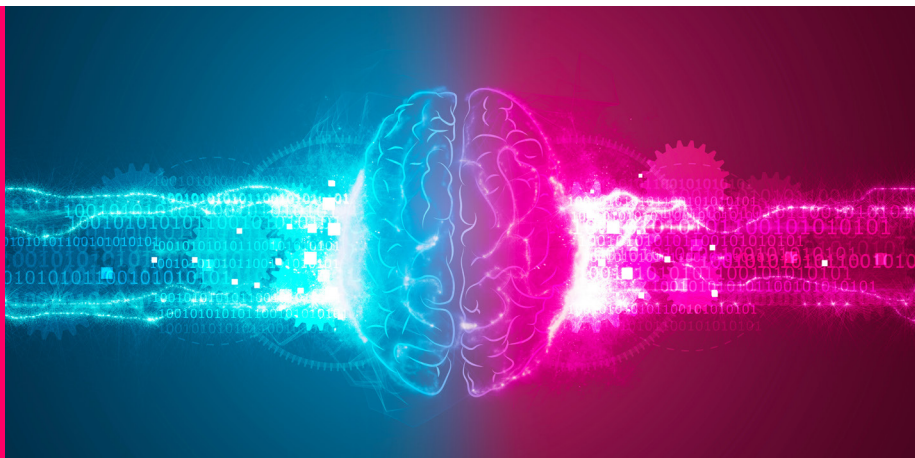
You might have heard about the Rule of Law in relation to foreign affairs in China: which is a long-term need to promote a high level of opening to the outside world. We deep in the news!

In China, the Barbie-movie was a big hit that was applauded for female empowerment. It also brought pink outfits on the streets. But what about the copyright of its main characters?

Hoping that you like this last GossIP issue, we send you our best wishes for a very sweet Christmas and a New Year full of joy.

## IP CHINA

### For the first time AI Generated Photo gets Copyright in China



In recent days, Beijing Internet Court released its decision relating to an infringement claim against an AI generated photo, confirming the copyrightability of the AI generated photo, and therefore ruling for infringement.

Taking aside the fact that the photo is generated by AI, the case is simple: the plaintiff, Mr Li, used the AI software Stable Diffusion to generate a photo by entering keywords and published it on his account of Little Red Book, a notorious social media in China.

One week later, he found that this exact photo was used as an insert of the article by another person (the defendant in the court case), without authorization, on its Baijiahao Account (another Chinese social media). Therefore, the plaintiff initiated the copyright infringement claim.

During the litigation, the plaintiff described the tools he used and made a detailed demonstration of the process for generating the photo, specifically:

1. Stable Diffusion Aki 4.2 (the version of the Stable Diffusion Open source in the package developed by an individual named Aki);

2. Two models developed specifically for generating Asian Females (published by a Bilibili user named K43), using “AsiaFacemix-pruned-fix.safetensors”, “lorahanfugirl-v1-5.safetensors”;

3. Below process were further developed / setup by the plaintiff to “create” the work at issue:

- a) Around 20 keywords for Prompt: ultra-photorealistic: 1.3), extremely high quality highdetail RAW color photo, in locations, Japan idol, highly detailed symmetrical attractive face, angular symmetrical face, perfect skin, skin pores, dreamy black eyes, reddish-brown plaits hairs, uniform, long legs, thighhighs, soft focus, (film grain, vivid colors, Film emulation, kodak gold portra 100, 35mm, canon50 f1,2), Lens Flare, Golden Hour, HD, Cinematic, Beautiful Dynamic Lighting

- b) Around 120 keywords were used for Negative Prompt: ((3d, render, cg, painting, drawing, cartoon, anime, comic:1,2)), bad anatomy, bad hands, text, error, missing fingers, extra digit, fewer digits, cropped, worst quality, signature, watermark, username, blurry, artist name, (long body), bad anatomy,

liquid body, malformed, mutated, bad proportions, uncoordinated body, unnatural body, disfigured, ugly, gross proportions, mutation, disfigured, deformed, (mutation), (child:1,2), b&w, fat, extra nipples, minimalistic, nsfw, lowres, bad anatomy, bad hands, text, error, missing fingers, extra digit, fewer digits, cropped, worst quality, low quality, normal quality, jpeg artifacts, signature, watermark, username, blurry, disfigured, kitsch, ugly, oversaturated, grain, low-res, deformed, disfigured, poorly drawn face, mutation, mutated, extra limb, ugly, poorly drawn hands, missing limb, floating limbs, Disconnected limbs, malformed hands, blur, out of focus, long neck, long body, ugly, disgusting, poorly drawn, childish, mutilated, mangled, old, surreal, text, b&w, monochrome, conjoined twins, multiple heads, extra legs, extra arms, meme, elongated, twisted, fingers, strabismus, heterochromia, closed eyes, blurred, watermark, wedding, group, dark skin, dark-skinned female, tattoos, nude, lowres, bad anatomy, bad hands, text, error, missing fingers, extra digit, fewer digits, cropped, worst quality, low quality, normal quality, jpeg artifacts, signature, watermark, username, blurry”

- c) Set the Sampling Step as 33

- d) Set the Height as 768

- e) Set the CFG Scale as 9

- f) Set the Seed as 2692150200

- g) Set the weight for model “lorahanfugirl-v1-5.safetensors” in “Additional-Networks”

- h) Modify the Seed as 2692150199

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**i)** Add several keywords in Prompt: “shy, elegant, cute, lust, cool pose, teen, viewing at camera, masterpiece, best quality”

Starting from step f), below photos has been generated as a result.



**4.** The court also made examination on legal terms and conditions of Stable Diffusion Open Source (the AI tool) and particularly on art. 6, which records: “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.”

The court applied the 4-step test in ruling the copyrightability of the work.

1. Whether the work is within the scope of literature, art and science - **YES**
2. Whether the work possesses originality- **YES**
3. Whether the work has a certain form of expression- **YES**
4. Whether the work is a result of intellectual achievement - **YES**

The court believe the answer for test 1 and 3 is obvious, given that the appearance of the work is no different than the usual photos or paintings.

✓ **Intellectual Achievement.** The court analyses that the image is not an existing image returned by search engine, nor it is a combination of various elements preset by the software designer.

In simple terms, the role or function of the model is similar to that of humans who have acquired certain abilities and skills through learning and accumulation. It can generate corresponding images based on human input text descriptions, substituting drawing lines and coloring by human, then present human creativity and ideas in a tangible way.

The plaintiff put in prompt words in describing the subject, details of the figure, environment, poses and style, then he adjusts the parameter and add several prompt words based on the photo preliminarily generated, and finally he selected a photo that he’s satisfied with.

**Viewing the process, the plaintiff made a certain amount of intellectual investment, such as designing the presentation of characters, selecting prompt words, arranging the order of prompt words, setting relevant parameters, selecting which image meets expectations, etc.**

**The photo at issue reflected the plaintiff’s intellectual investment, therefore it shall be considered a result of intellectual achievement.**

✓ **Originality.** The court analyses that in general, the more diverse the requirements, the clearer and more specific the descriptions of image elements, layout, and composition are, and the more personalized their expression can be reflected.

The plaintiff designed visual elements such as characters and their presentation through prompt words, and set parameters for screen layout and composition, reflecting the plaintiff’s selection and arrangement.

In the meantime, the plaintiff obtained the first image by inputting prompt words and setting relevant parameters. He continued to add prompt words and modify parameters, continuously adjusting and correcting them, and finally obtained the photo at issue. This adjustment and correction process also reflects the plaintiff’s aesthetic choice and personal decision.

The court therefore ruled that the photo at issue possesses originality.

The court also made a Policy Concern analysis.

**Generative artificial intelligence technology has brought about changes in people’s creative methods, which is similar to the impact of many technological advancements in history. The process of technological development is the gradual outsourcing of human work to machines.**

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Before the emergence of cameras, people needed to use advanced painting skills to reproduce images, and the emergence of cameras made it easier to record objective images. Now, the photography function of smartphones is becoming more and more powerful, and it is becoming simpler to use. And as long as the photos taken with smartphones reflect the photographer's originality and intellectual investment, it will be considered work of photography and therefore protected by copyright law.

Therefore, the more advanced the technology and more intelligent the tools are, the less investment by human is needed.

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The court made an analogy between using AI to generate the photo and entrusting an artist to paint a drawing, considering them similar. A big difference is that an artist has his own free will in selection and judgement and therefore can be considered a creator of the work while AI does not.

The court therefore analyses that using AI to generate photo shall still be considered human using tools for creation, meaning that human is the entity making intellectual investment instead of AI.

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The court believes that encouraging more people to use latest tools for creation will benefit the creation of work and the development of AI technology, and therefore as long as the AI generated photos possesses original intellectual investment, it can be considered a work.



### HFG Comment

We believe the court is making analogy for the copyrightability in usage of AI in generating photos and copyrightability in the usage of camera in taking photos, where the latter was also highly controversial over a hundred years ago. It seemed to us the court is saying, back then we pro for photography, and in the same way we shall pro for AI.

We also noticed a contrary decision was made in US in Aug 2023, where the judge (and US Copyright Office) ruled that works generated entirely by artificial intelligence are not copyrightable for lack of human authorship.

**Fredrick Xie**  
HFG Law & Intellectual Property

## IP CHINA

### Unprecedented damage compensation for TMK infringement



Useless to say that when we talk about China (under any aspect), numbers are always huge. The case we analyze below is no exception. Indeed 100 million RMB (around 14 million USD) plus legal expenses were finally recognized to the plaintiff of this case by the Supreme People's Court.

Let's dig a bit more in the details of this fascinating case.

The plaintiff is a very popular security door manufacturer called "PANPAN" and the trademark of this company was recognized well-known trademark as early as 1999. The business has been flourishing since then and no big legal matters occurred until 2016. In this year the counterparty, a Chinese citizen named Mr. Zhou, was able to purchase a registered trademark which is somehow similar (very similar!) to "PANPAN". The trademark that was purchased is called "XINPANPAN", where the first character "XIN" shares a very similar pronunciation to the character which means "new".

Happy with his registered "new" trademark, Mr. Zhou decided to use it and put it on business officially. He entered the business of security doors as well promoting himself as the New PanPan company.

Few years later, the original company noticed the growing business launched by Mr. Zhou and decided to file a lawsuit before the Jiangsu High People's Court, seeking an order against "Xin PanPan" (the company), Mr. Zhou (the physical person) and two other co-defendants to cease all infringements and unfair competition actions, and to bear 95 million RMB in damages for trademark infringement and 5 million RMB for unfair competition, as well as reasonable expenses.

The claim was fully supported by the Jiangsu Court and so far seems everything "ordinary". What is interesting though about this case is how this amount was calculated. Indeed, we are familiar with decisions that most likely recognize an award for the plaintiff somehow similar or slightly greater than the profit generated by the illegal actions carried out by the infringers.

In this case we can see that the illicit profit calculated by the Court amounted to 27 million RMB: in the first instance

it was the defendant himself who stated that their accounting and finance department was chaotic, hence the 27 million RMB were calculated mostly based on the evidence provided by the plaintiff "PANPAN").

In terms of punitive damages, the SPC considered multiple factors, including:

industry competition

- ▶ the malicious trademark acquisition
- ▶ the repeated infringements
- ▶ intentional factors
- ▶ the broad scope of the infringement; and
- ▶ Xin PanPan's high profits

In particular, the SPC noted as follows:

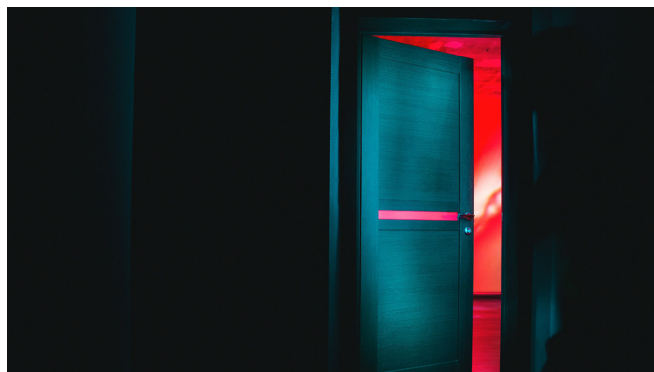
1. Zhou had business dealings with "PanPan" Company as early as 2007, and thus was well aware of the fame and influence of the "PANPAN" trademarks. Nevertheless, it still established "Xin PanPan" in September 2016 and actively sought to acquire the "XINPANPAN" trademark for infringing activities.
2. Phonetically, "Xin PanPan" resembles "New PanPan", thus showing an intent to leverage the renown of "PanPan" Company and its related trademarks.
3. Zhou directed "Xin PanPan" to continue using the "XINPANPAN" trademark even after it was declared invalid.
4. After a temporary name change, Xin PanPan's official WeChat account was changed back to "Sichuan Xin PanPan Company Limited", clearly demonstrating an intent to infringe on the series of trademarks of "PanPan" Company.

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I must say that the work done by the legal department of the "PANPAN" company was extraordinary. It is indeed very important to collect as much evidence of the infringement as possible, which will form the basis for the calculation of the amount to be confirmed by the Court.

Another important aspect here is the fact that the actual controllers of the company, as well as the individual trademark owners, were all cited as co-defendants and successfully pursued for joint infringement, thus putting a lot of pressure on the business leaders and not only on the company.

Last but not least, is the recognition of the legal expenses. We do not often see this claim recognized and when it happens, it usually covers only basic expenses. In this case the Jiangsu High People's Court explicitly acknowledged that PanPan Company had invested significant efforts into investigating and collecting evidence for the litigation.



As a result, the court determined that 650,000 RMB (more than 90,000 USD) was a fair and reasonable amount to cover expenses.

**Antonio Lovecchio**  
**HFG Law & Intellectual Property**

## IP CHINA

### Anchor trademark counterfeiter sentenced to 4.5 years in prison



The brand "Anchor", which is owned by Fonterra, is one of the top imported brands for dairy products in China, especially on e-commerce platforms.

In a recent judgement, the Shanghai Jinshan Primary People's Court delivered a verdict and sentenced the defendant Wang to 4.5 years in prison plus a fine of 2 million RMB for counterfeiting "Anchor" and "Fonterra" trademarks. A co-defendant also received a suspended sentence.

The legal proceeding originated from a raid action in October 2020 when the local PSB seized a large number of counterfeit "Anchor" dairy products valued at over 30,000 RMB. Through investigation, it was found that, over the past years, Wang and his accomplices had sold around 8 million RMB worth of counterfeit dairy products bearing "Anchor" trademarks, mainly through online platform.

Wang was arrested in 2022, and the court announced the sentencing on October 24, 2023.

The court holds that the defendants have used the same trademark registered by others on the same goods without the permission of the trademark owner. By doing such illegal business, they have made huge revenues and their actions have constituted the crime of counterfeiting registered trademarks as well as infringement upon others' IP rights.

According to the judge, this case reflects that China provides diversified legal remedies for trademark infringement, which harms trademark owners, confuses consumers, and disrupts the market order. Counterfeiting of registered trademarks can lead to civil, administrative, and even criminal liabilities.

The legal provisions, such as Articles 57, 60, and 63 of the Trademark Law and Articles 213, 214, and 215 of the Criminal Law, serve to protect trademark owners and consumers as well as ensure a fair competition environment in the market.

Additionally, this case is a reminder for the consumers to opt for authorized channels when making purchasing choices.

Since online platforms have become the main method of shopping for many consumers and it's difficult to verify the products before purchasing, consumers are advised to choose regular or authorized merchants and platforms to ensure the authenticity of their purchases.

Lastly, the severe punishment sentenced to Wang and the co-defendant also brings a deterrent effect to the other potential criminal acts, which could further protect the interest the consumers and maintain a fair market environment.

Crystal Yulan Zhang  
HFG Law & Intellectual Property



## NEWS

### The rule of Law in China in relation to foreign affairs



The Political Bureau of the Central Committee of the Communist Party of China (CPC) held its 10th collective study on strengthening the rule of law in relation to foreign affairs on the afternoon of November 27th.

Xi Jinping, General Secretary of the CPC Central Committee, stressed that strengthening the rule of law in relation to foreign affairs is not only a long-term need to comprehensively promote the construction of a strong country and national rejuvenation with Chinese-style modernization, but also an urgent need to promote a high level of opening up to the outside world and respond to external risks and challenges.

From the perspective of better integrating the domestic and international situations as well as development and security, China should have a profound understanding of the importance and urgency of doing a good job in the rule of law in relation to foreign affairs, and build a foreign-related rule of law system and capacity that meets the requirements of high-quality development and high-level opening up to the outside world, so as to create favorable conditions for the rule of law and external environment for the steady march of Chinese-style modernization.

Xi Jinping pointed out that the rule of law in relation to foreign affairs is a wide-ranging and highly interlinked systematic project, and that it is necessary to integrate domestic and international affairs, development and security, adhere to forward-looking thinking, overall planning, strategic layout, and holistic advancement, strengthen the top-level design, and promote the legislation on foreign affairs, law enforcement, administration of justice, law-abidingness, and legal services as a whole, so as to form a pattern of synergy in rule of law work in relation to foreign affairs.

**It is necessary to actively develop foreign-related legal services and cultivate a number of international first-class arbitration institutions and law firms. It is necessary to deepen international cooperation in law enforcement and justice, strengthen consular protection and assistance, and build a strong rule of law security chain to protect China's overseas interests.**

It is necessary to strengthen the awareness of compliance, guide Chinese citizens and enterprises to consciously abide by local laws and regulations and customs in the process of "going out", and use the rule of law and rules to safeguard their legitimate rights and interests.

Xi stressed the necessity to firmly uphold the international order based on international law, take the initiative to participate in international rulemaking, and promote the rule of law in international relations. China should actively participate in the reform and construction of the global governance system, promote the development of global governance in a more just and reasonable direction, promote good global governance with good international law, and help build a community of human destiny.

**Xi Jinping pointed out that the rule of law goes hand in hand with opening up, and when opening up is pushed forward one step, the construction of the rule of law in relation to foreign affairs should be followed by one step.**

The rule of law is the best business environment, to improve the open and transparent foreign-related legal system, strengthen the protection of intellectual property rights, safeguard the legitimate rights and interests of foreign-funded enterprises, and make good use of the domestic and international rules, to create a first-class market-oriented, rule of law, international business environment.

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It is necessary to take the initiative to dock and actively absorb high-standard international economic and trade rules, steadily expand the systematic opening up, enhance the level of trade and investment liberalization and facilitation, and build a higher level of new open economic system.

It is necessary to benchmark against the international advanced level and raise the effective measures and mature experience of high-level opening up to the outside world, such as the pilot free trade zones, into law in a timely manner, so as to create a new high ground for opening up to the outside world with a higher level of opening up, a better business environment, and a stronger radiating effect.

It is necessary to comprehensively enhance the ability to safeguard the security of opening up in accordance with the law. It will also improve the service measures to facilitate the life of foreigners in China as well as the relevant laws and regulations.



The government will also improve the service measures to facilitate the life of foreigners in China and the related laws and regulations.

Source: Xinhua 2023-11-28

**HFG Law & Intellectual Property**

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## IP CHINA

### Barbie trademarks in China: Is it 'Kenough'?



Mattel has had a great summer, making Barbie popular again with new generations through its first Barbie movie.

It even made a new cultural phenomenon together with *Oppenheimer*: *Barbenheimer*. Which refers to the release of the movies *Barbie* and *Oppenheimer* during the same box-office period, and then watching them both in the cinema during that same period.

In China, the *Barbie*-movie was a big hit that was applauded for female empowerment. It also brought pink outfits on the streets.

Furthermore, the word 'Kenough!' or the phrase, 'I am Kenough!' became big hits in various outfits. Ken, as always, is the 'extra role' next to Barbie. After all, the IP of Mattel regarding Barbie is all about, indeed: Barbie. That was the clear take-away from the movie.

So that would answer the question: But what about Ken? Still, it would be interesting to see what Mattel has registered in China, to see if it is indeed all about Barbie in China.

#### Barbie registrations in China

When looking at registrations in China, it is clear that Mattel has registered or has tried to register the Barbie related trademarks in as broad as you can expect classification-wise.

This sees on, amongst others, the word mark Barbie, the Chinese word mark 芭比 (Babi is the Chinese translation of Barbie). Barbicore, Cutie Reveal, Dreamhouse and many Chinese translations of such (incl Barbie snacks, Barbie food etc) are also protected in China.

The Barbie trademarks in China thus seem well protected.

The Barbie-pink colour might be hard to get registered for China, as China would require a colour combination, instead of one single colour, to form a registrable trademark. Even so, as the Barbie trademark seems to be well-known in China, the Barbie-pink colour could definitely be used in anti-unfair competition cases that copy the look and feel of the Barbie-packaging, including the Barbie-pink.

#### But what about Ken?

Not surprisingly Ken is minimally protected. Much to our surprise, Kenough or I am Kenough., seem not to be registered in China, even though this has become a popular name or phrase on clothing merchandise.

A simple search on Chinese e-commerce platforms for clothing related to Kenough, reveals many Kenough outfits. Hence, this could be an area where Mattel could do more IP protection IP-wise, i.e. registering these trademarks. That is, if the company wants it. After all, the movie has made it pretty clear: it's all about Barbie, not Ken.

#### 'Kenough!' or protection by copyright?

The good news for Mattel is that the clothing that Ryan Gosling wears as Ken, with the wording in special font: I am Kenough, is protected in China under copyright.

It is protected from the moment of creation in accordance with the Berne-Convention. It would be good to obtain a copyright certificate for this, which turns around the burden of proof. As such, the other party would need to prove that Mattel does not own the copyright.

Copyright registrations in China are very affordable and are very handy and powerful to have. For more information about copyright registrations, please do not hesitate to contact us.

Reinout van Malenstein  
HFG Law & Intellectual Property

## IP CHINA

### David Guetta, ChatGPT, AI: which copyright in China?



David Guetta using AI to deepfake Eminem in a song during live performance just happened earlier this February 2023. (David Guetta on Twitter: "[Let me introduce you to... Emin-AI-em](https://t.co/48prbMIBtv)" <https://t.co/48prbMIBtv> / Twitter)

The famous DJ used AI to create vocals and rap sounding as if made and rapped by Eminem, or in Guetta's own words: Emin-AI-em. He stated that he would not release it commercially and that it is done as a joke. However, one could argue that releasing it during a performance as DJ would technically mean that he did perform and release it commercially. Also, the crowd went pretty nuts when Guetta played the Emin-AI-em and provided him with a lot of added marketing.

If one of the world's most famous DJs uses AI to create a song and perform, then what do you reckon students will do with their homework? Right... Many students will likely turn to ChatGPT for their homework. This is a step further than stating that the source is Google, which unfortunately is the answer many University students give the past years when asked about the source of their work.

There is an obvious discussion about whether or not this is good for students' creativity, but that it is not the topic in this article. I want to talk about who actually owns the copyright in China on such works created with AI.

Can AI own copyright in China? Does the copyright belong to the person who puts it in the AI? Or are we talking about blatant copyright infringement?

#### ✓ What is copyright and how does copyright exist?

Copyright protects the expression of an idea in a fixed medium. Works need to be original and have a certain level of creativity. For businesses these kinds of copyrightable works could be websites, products catalogue, manual, photographs, software, music, cinematic works, packaging, dramatic works, images, labels, books, fine art, etc. The "etc." means that there is no infinite list of copyright protectable objects.

Copyright exists the moment it is created, and it belongs to the author. It does not need official registration. Even though China provides a copyright registration system, this is mostly for smart rightowners who know that holding such registration reverses the burden of proof, i.e. instead of having to prove that you have the copyright, the certificate does the trick, and any other party not agreeing

with this has to prove that you are not the legitimate owner of the copyright.

Therefore, copyright registration in China is highly recommended for companies. For more information on this, please do contact me.

#### ✓ What does the Chinese law say on AI authorship?

The Chinese copyright law basically says that the copyright generally belongs to the author. Whether or not an author can be AI, i.e. not human, is not explicitly mentioned.

Based on the nature of copyright law, which is close to the human creator, this most likely will not become the case. It is also not mentioned if a natural person would get the authorship regarding AI generated works with human input.

However, there seems to be more space under Chinese law for this type of reasoning to allow such copyright on AI generated works with a certain threshold of human input.

#### ✓ What do the Chinese courts say on AI authorship?

As the law does not explicitly mention the AI or human/AI authorship, let's have a look at Chinese jurisprudence. Even though there is no doctrine of precedent in China, jurisprudence is really important for us to understand Chinese legal reasoning and does play an important role in future law making.

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In Shenzhen, the Nanshan District court ruled in 2020 in the Tencent vs. Yingxun case that an article generated by Dreamwriter software with input from Tencent's team did have originality and creativity and thus has copyright under Chinese law. Hence, if there is a certain degree of human input and creativity, copyright on AI created content might exist. The author is than the person that put in a certain amount of input or the company that person or persons work(s) for.

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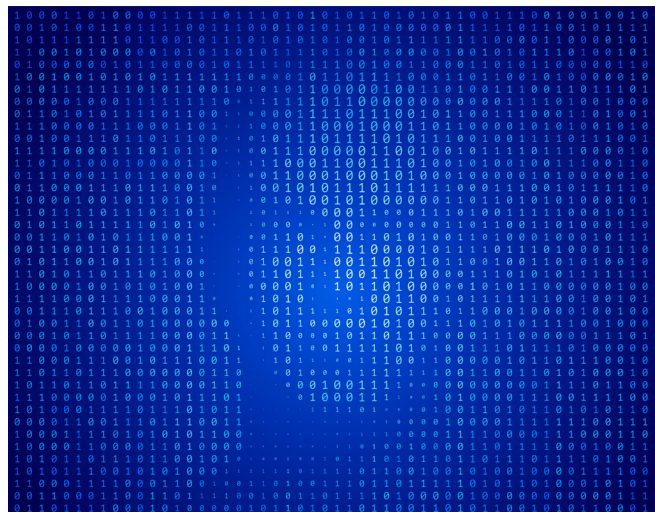
### ✓ No ChatGPT in China

So, what does this mean for ChatGPT in China? AI is super popular in China. The moment the word on ChatGPT came out, Chinese netizens massively wanted to try it. The same happened months ago when Chinese netizens used AI to generate art. For some art AI apps, we are talking more than 600,000 users per day. According to Global Times, 60% of these people being 25 years and below.

As ChatGPT does not reveal where it sourced its information, under Chinese law, plagiarism will be the big risk here. Naturally, this could mean copyright infringement.

However, many Western AI websites are not available in China due to China's regulations and laws. Many foreign websites/Apps as Facebook and Instagram are blocked, and China often has its own national alternatives, such as Wechat (Weixin) and TikTok (Douyin).

ChatGPT was however until recently available through third party APPs that integrated it through linking, however this is not possible anymore since the third week of February as Chinese APPs were informed to close this access. Hence, the Chinese might have to turn to Baidu's Ernie or another chat app created by Tencent or another party in the future. One thing is certain: the genie is out of the bottle, i.e. more AI will come.



### ✓ What the future holds for AI, copyright and China

AI is very high on the radar of the Chinese government. With the recent developments in AI, it would not be surprising if the government addresses the issue of authorship and AI soon.

Reality learns that governments always need a lot of time to make laws regarding new technological developments. Copyright law is no exception to that. Law will always be later than the technology.

Until the time of new laws and regulations, the precedent of authorship for natural persons that use AI with a certain amount of natural input, originality and creativity to create a copyrightable work can stand in China.

**Reinout van Malenstein**  
HFG Law & Intellectual Property

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## IP CHINA

### Severe Punishment for counterfeiting Bordeaux TMK



In January 2023, the Shanghai Third Intermediate People's Court upheld the ruling of three-year sentence and 100,000 RMB fine to Wang and his company who were involved in the crime of counterfeiting the collective trademark "Bordeaux".

Let's take a closer look at the case.

In December 2015, Wang, together with his partners, established a company in Yantai City, Shandong Province. In 2019, the company started the production and distribution of wine labelled with "Bordeaux" trademarks without the permission of the trademark owner Conseil Interprofessionnel du Vin de Bordeaux (CIVB). Over 60,000 bottles of counterfeit Bordeaux wines were found to have been produced in about 2 years.

**In 2021, Wang's company and warehouse were raided by the police. Wang, who was arrested for the crime of trademark infringement, later made a compensation of 1.28 million RMB to the trademark owner.**

The first instance sentenced the defendant unit to a fine of 450,000 RMB for the crime of counterfeiting registered trademark and 3 years in prison to Wang with a fine of 100,000 RMB. Wang and the defendants appealed against the decision by arguing that the wine they produced were in line with the national standards without endangering the health or interests of consumers and Wang should therefore be given a lighter punishment.

After trial, the Shanghai Third Intermediate People's Court held that:

- ✓ The defendants used the same trademarks on the same products without the authorization of the trademark owner.
- ✓ Although Wang confessed his crime and compensated the trademark owner, in light of the criminal facts, production amount, sales amount, etc., the first instance judgment was not inappropriate.
- ✓ The appeal was not supported, and the sentencing was affirmed.

"Bordeaux" is a recognized geographical indication collective trademark owned by Bordeaux's official trade body CIVB and obtained GI recognition in China. As one of the most well-known appellations, Bordeaux wine enjoys great popularity and, unsurprisingly, is frequently counterfeited in China. Over the past decade, CIVB has invested a lot to combat counterfeits, obtain IP grounds and trained law enforcement agencies on wine labeling in order to protect its rights.

In this case, the defendants knowingly produced Bordeaux-labelled wines without authorization from CIVB. They also forged Customs declaration documents in order to deceive consumers that the raw materials were imported from Bordeaux.

It's also worth mentioning that Shandong is known for its vineyards and wine production, it is also home to many counterfeit wine producers. So the court's decision could serve as a strong deterrent message to those who may be engaging in the similar activities in the region.

**Crystal Yulan Zhang**  
HFG Law & Intellectual Property