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Challenges and impacts of AI on Intellectual Property: a comparison between China and the EU

Introduction

Although Artificial Intelligence (AI) is a well-established field, the recent emergence of Generative AI represents a major shift. Released in 2022 by the US company OpenAI, **ChatGPT was the first chatbot able to produce "original" content.** Its success quickly led other companies to respond, such as Google with the launch of Gemini.

Generative AI refers to systems that, using machine learning algorithms, can create new content such as text, audio, images, video, and computer code. While these tools create new opportunities, **they also raise legal challenges, particularly in the field of Intellectual Property (IP) and Copyright**. Key issues include the use of large datasets for training, which may involve copyrighted material without permission, and imitation, as AI-generated content can closely resemble protected works.

These challenges raise important questions regarding AI's role in authorship: Can AI-generated creations be legally protected? What constitutes copyright infringement, and what are the legal consequences?

In order to approach these issues, governments around the world have taken different approaches. In this regard, we will first look at the regulatory framework established in China, and then examine the one adopted by the European Union.

China's regulatory model

The Chinese regulatory model for AI is characterized, and differs from that of the European Union, in two main respects.

I. Firstly, **there is no single unified regulation:** the system relies on traditional instruments, such as the Civil Code and Intellectual Property Laws, while also introducing new, AI-specific measures (see below).
II. Secondly, **it is highly centralized and oriented towards enforcement.**

At the core of intellectual property protection (particularly with regard to copyright), **the Chinese regulatory model grants protection only to works that embody human intellectual creativity**. Content generated entirely by AI, without human involvement, is not eligible for copyright. On the contrary, when a person contributes (for example by providing prompts or instructions to), the resulting output may qualify for protection.

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In terms of liability, AI platforms are required to train their models using legally sourced data and to prevent the unauthorized use of copyrighted works. **Failure to comply can result in legal liability before Chinese courts.**

This traditional framework has been complemented by recent regulations. The **Interim Measures on Generative AI (2023)** focus on transparency and accountability, requiring platforms to train AI models exclusively on licensed, publicly available, or otherwise legally approved data). **The Deep Synthesis Regulation** is centered on harmful and/or misleading uses of AI, for example requiring the clear labeling of media generated by AI.

Finally, in line with its enforcement-oriented approach, China has introduced the **Copyright AI Intelligent Review system**, designed to assist courts in handling infringement cases, particularly in the field of images. The system relies on **"image search" technology** based on a large database. By automating these processes, it facilitates evidence collection for rights holders, and helps address both infringements and false claims.

European Union's regulatory framework

Unlike the Chinese approach, the European Union has adopted a unified regulation on artificial intelligence, namely the **AI Act (Regulation EU 2024/1689).** The Act came into force on August 1st, 2024, with full application planned from August 2nd, 2026. Its main goal is to ensure that AI systems are developed and used responsibly, thereby promoting the spread of trustworthy AI across EU. To achieve this, the Act imposes obligations on operators that develop, distribute, import or use AI systems in the EU, and provides for sanctions in cases of non-compliance.

The Act takes a risk-based approach, distinguishing four categories of Artificial Intelligence systems:

- Unacceptable risk (Art. 5)
- High risk (Art. 6)
- Limited Risk
- Minimal Risk
- No Risk.

In addition, it introduces specific rules for general-purpose AI (GPAI) models, including generative AI, which became applicable from August 1st, 2025.

In terms of copyright and intellectual property compliance, providers of AI systems must adopt policies to ensure conformity with EU copyright law. It is also required to make publicly available a summary of the content used for training of the general-purpose AI model (Art. 53).

In addition to these obligations, the Commission has introduced several tools to support the responsible diffusion of GPAI models. Among them, the **GPAI Code**

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of Practice offers practical guidance to help providers meet their duties under the AI Act in the areas of transparency, copyright, and safety. Specifically, the **Copyright Chapter requires providers to:**

I. to draw up, regularly update, and implement a copyright policy;
II. use only lawfully accessible protected content when crawling the web;
III. comply with rights reservations;
IV. take steps to mitigate risks of infringing outputs;
V. and establish a contact point to handle complaints from rights holders.

As far as sanctions are concerned, the AI Act establishes a sort of dual system. On one hand, Member States must define rules on penalties and enforcement measures to ensure effective implementation of the Regulation (Art. 99). On the other hand, the European Commission may impose administrative fines in cases where providers, either intentionally or negligently, violate relevant provisions, including core obligations (such as those under Article 53).

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