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Research on Copyright Protection of Creative Style in Artificial Intelligence Era

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Abstract: The rapid development of artificial intelligence (AI) technology has revolutionized creative production and challenged the traditional copyright protection framework in particular. This paper examines the legal implications of AI's ability to accurately mimic creative styles, focusing on the limitations of the creativity-expression dichotomy in addressing this emerging issue. By analyzing the current copyright law framework and its application to AI-generated works, this study reveals significant gaps in the protection of creative style in the age of AI. The study identifies two major challenges: the increasingly blurred line between creativity and expression, and the difficulty of applying the substantial similarity standard in style parody cases. To address these challenges, this paper suggests redefining creative style as a special form of expression worthy of copyright protection and experimenting with total concept and feel test approach in practice. These findings contribute to the theoretical development of copyright law and provide practical guidance for handling AI-related copyright disputes, while promoting balanced protection of creators' rights in the AI era.

Keywords: Artificial Intelligence, Copyright Protection, Creative Style, Idea-expression Dichotomy

1. Introduction

Since the release of ChatGPT, generative AI has rapidly advanced and become widespread within two years. This progress has profoundly impacted the foundational concept of copyright—originality of expression—because AI can now perform “creative” tasks once considered exclusive to humans, with remarkable quality and speed. Technological iteration has enabled the creation of works with significant artistic value, some even worthy of museum exhibition [1]. AI can also be utilized to directly edit contents or imitate the artistic styles of source images and texts [2]. However, whether AI’s imitation of specific creative styles qualifies for copyright protection remains an urgent and unresolved issue. This question challenges the cornerstone of copyright law: the idea-expression dichotomy [3].

The objective of this paper is to identify a path to redefine creative styles and ultimately achieve better protection for them through a discussion of the existing idea-expression dichotomy and practical methods. This paper’s significance lies in three key aspects. Theoretically, AI’s precise imitation of creative styles challenges the idea-expression dichotomy. Addressing this issue could provide guidance for copyright law innovation in the AI era, fostering its dynamic evolution to accommodate this unprecedented creative model. Practically, with the growing number of legal

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cases involving AI-generated works, clarifying this issue could offer valuable insights and set a foundation for handling future disputes. Socially, AI's efficient creativity threatens human creators by replicating years of effort in a short time. Without regulation, this undermines creators' economic interests and motivation, contradicting copyright law's purpose of fostering creativity.

2. The Dilemma of Creative Style Protection in the Era of Artificial Intelligence

2.1. AI Technology's Precise Imitation of Creative Style

"There is nothing new under the sun," and humans, in the field of artistic and literary creation, have always imitated existing works, often subconsciously. However, human imitation of style is inherently limited. Even after spending a lot of time dissecting and imitating other people's works, it still remains difficult to perfectly replicate their styles.

AI, on the other hand, has truly realized efficient and accurate imitation of styles across various creative fields including music, art, or literary creation. This is by no means alarmist. In the age of AI, creative style is no longer an esoteric personal characteristic of the artist but rather a concrete entity that can be expressed through code, data, algorithms, and so on. Recently, the famous Japanese manga artist Araki Hirohiko denounced AI for its ability to mimic his distinctive artistic style with such precision that it became nearly indistinguishable from his original drawings. He remarked, "As a manga artist, I will add some subtle and personalized elements in my creation to make the work uniquely distinctive. However, this AI-generated drawing surprisingly mimics even the way I draw my eyelashes, almost making it difficult for me to distinguish the real thing from the fake" [4].

This issue is not new. A similar case can be traced back to thirty years ago, when Scott French, a Silicon Valley programmer, spent eight years developing a program that analyzed hundreds of elements from the works of author Jacqueline Susann. By modeling elements such as plotting and structural patterns, French's program succeeded in generating a novel that was entirely original in terms of text but so closely resembled Susann's style that any reader will recognize it as one of her works [5]. If programs could achieve such stylistic mimicry with 1990s technology, it is clear that today's AI has taken this ability to a new level of efficiency. For example, the popular selfie filter function on short-video platforms, based on style migration technology, can transform ordinary photos into "Miyazaki style" or "Van Gogh style" art images in just a few seconds, illustrating how AI's ability to replicate styles has become both widespread and efficient.

2.2. The Ambiguity of Creative Style Protection under the Dichotomy of Expression of Ideas

The notable difficulties faced in the protection of creative styles largely stem from the central theory of the idea-expression dichotomy in copyright law. According to this theory, copyright law protects only the original expression of an idea, not the idea itself. This means that if what is imitated is considered an "idea" rather than an "expression," it cannot constitute copyright infringement. Copyright infringement only occurs when a specific expression is copied [6].

However, this framework presents significant ambiguity in practice, especially in the area of creative style protection. There is no clear line between idea and expression. This lack of clarity leads to the possibility of very different outcomes in similar cases.

Take musical works as an example: in the famous Blurred Lines case in the history of the United States, this case concerns the family of the famous deceased American singer Marvin Gaye suing another singer, Pharrell Williams, for allegedly plagiarizing Gaye's Got To Give It Up in the song Blurred Lines. Even though there was no substantial similarity between the two compositions in terms of core elements such as melody, harmony, and rhythm, the court finally ruled that "a musical work is a complex work consisting of a variety of elements and should not be confined to a narrow

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scope of expression" [7]. As a result, the defendant was found to have copied the plaintiff's creative style.

In contrast, in the *Griffin v.* Sheeran case, even though there were many similarities between the two songs in terms of chord progressions and bass lines, the court explicitly pointed out that these similarities were only related to generic forms of expression in musical works, which belonged to the realm of ideas and should not be protected by copyright law [8].

These contrasting outcomes highlight the lack of a clear legal standard for determining whether certain non-textual elements in an artistic work should be classified as ideas or expressions. This inherent ambiguity in the boundary between idea and expression has directly led to the controversy over whether creative styles should be eligible for copyright protection.

3. The Limitations of Existing Copyright Law to the Protection of Creative Style

3.1. The Difficulty of Defining the Boundary between Ideas and Expression

As mentioned above, the idea-expression dichotomy is the foundation of the entire copyright law. It determines the scope of rights for copyright holders and the boundaries within which others can use their works. However, a major issue with this framework is the lack of a clear and uniform definition of the terms "idea" and "expression." According to Locke, an intangible, conceptual idea is very different from a tangible, perceptible expression: every work of art reflects the artist's attempt to convey an intangible, essential idea through some perceptible expression [9]. Prof. Nimmer further clarifies that an idea is "without concrete manifestation or expression," but this is merely a restatement of the term "idea" itself . He says,"The dichotomy merely reformulates the problem, but it does not solve it" [10]

The word "expression" is also full of confusion. In the Oxford Dictionary, "expression" can refer to "the way people say or write things to express their feelings, opinions, and ideas; to show strong emotion when playing music, speaking, acting, etc." The former aligns with the idea-expression dichotomy, while the latter pertains more to the realm of the arts. Taken literally, it is easy to conclude that expression is any perceptible form used to present a particular idea, and it would seem that all of this expression could be protected if viewed in the context of the idea-expression dichotomy.

At the same time, however, most courts have used the term "expression" to define certain components of a work when it really means "that part of the work that is capable of being protected." In practice, there are specific parts of expression that cannot be protected, and there are parts of what were once considered ideas that can now be protected [12]. So there is a reversal of logic here, as judges are not actually protecting something because it is an "expression," but are calling it an "expression" because it should be protected.

In sum, some courts seem to use the term "idea" to refer to "abstract concepts" that are not protectable, while others use the term "idea" to refer to any form of expression in a protected work that is not protected; courts have sometimes used the term "expression" to refer to any concrete embodiment of an idea, whether protectable or not, and in other cases the term appears to refer only to protectable elements of the work [13].

3.2. The Difficulty of Applying the Standard of Substantial Similarity to the Protection of Creative Style

Another challenge in protecting creative style lies in the application of the substantial similarity test, which is often used to determine whether plagiarism has occurred. Even if a judge in a particular case finds that creative style protection should be granted, it is not so easy to determine whether there is substantial similarity. Compared to the standard of literal similarity, creative style similarity is more

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complex and subjective, as style imitation is usually non-literal or non-visual, and such similarity is not always easy to directly observe or quantify. While textual similarity can be analyzed by comparing each piece, creative style similarity is different, as it is often embodied in the overall artistic expression, formal style, or creative techniques, and therefore it becomes more difficult to measure the "substantial similarity" of such styles in the judgment.

This is how Professor Nimmer defines non-literal similarity - not just the similarity of a line, paragraph, or other small part of a work, but the reproduction of the basic essence or structure of one work in another [14]. But the application of this standard is still fraught with subjectivity - what constitutes the essential essence of a work? A distinctive creative style, which might be seen as an author's unique artistry, could be recognized as essential, but it is far more difficult to pinpoint in practice. This is because the line between no similarity and complete or near-complete literal similarity is not always clear [15].

Moreover, there is no specific definition of substantial similarity in national laws, which leads to the same problem as judging the boundaries of ideological expression, which relies too much on the discretion of the individual judge. This uncertainty, coupled with the ambiguity surrounding the idea-expression dichotomy, makes the protection of creative styles under existing copyright laws even more difficult and uncertain.

4. Suggestions for Improving the Protection of Creative Style in the Era of Artificial Intelligence

4.1. Redefining the Legal Attributes of Creative Styles from the Perspective of Special Expressions

In the final analysis, the question still needs to return to idea and expression themselves. Trying to draw a clear line between the two seems to be a difficult task, and one might even say that we should not try to separate them completely. It is impossible to find in any work of art an expression that is completely free from idea, or a pure idea that is free from expression. In fact, any idea that a human being can perceive or comprehend is manifested in some concrete form of expression, especially in the visual arts. For example, what is the idea of the Mona Lisa? And what idea is conveyed by the statue of David? Although we can summarize the themes of these works, it is difficult for us to precisely define the specific ideas contained in these works. So perhaps there is no need to introduce into practice such an elusive concept as "idea," and it is true that in the long history of judicial practice no precise distinction has ever been drawn.

Therefore, instead of focusing on the elusive concept of "idea," the theory of originality can be used as the criterion for judgment. Unprotectable elements, such as subject matter and general artistic style, whose originality cannot be proved, while the specific, unique contributions of an author are what can be protected.

In this context, creative style can be defined as a specific artistic expression with originality that can be protected. It consists of a series of unprotectable expressions (e.g., artistic style in the broad sense, or specific artistic techniques) that form a cohesive, distinctive artistic expression. Style refers to a "whole" created by the selection and arrangement of many tiny aesthetic choices that work together to create an expressive effect. For example, bold brush strokes, oil painting techniques, and rich colors are elements that individually are not original, but after being selected, arranged, and combined by a creator full of personal characteristics, they form a unique style of artistic creation. This holistic perspective not only provides a clearer framework for the protection of artistic styles, but also provides a new practical basis for dealing with the challenge of generative AI imitating specific styles in the future.

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4.2. Clarifying the Legal Boundaries of Creative Style Protection and Technical Support Paths

A common concern is that the protection of creative styles may restrict future creators from developing their own styles and creating new works by imitating existing styles. However, under such a definition only the overall creative style can be protected, not individual stylistic components. As mentioned above, human creativity has always been based on imitation, but it is almost impossible to reproduce a certain style completely in human creativity. Each creator's work is inevitably personal, and existing works always contain qualities that cannot be fully reproduced. Therefore, this definition does not substantially limit human creators. In fact, this definition is more aimed at creators who use AI technology to replicate existing styles exactly.

In practice, to tackle this issue, the “total concept and feel test” proposed by the U.S. Ninth Circuit Court could be applied. This test asserts that if two works appear sufficiently similar in overall feeling and atmosphere, they can be considered substantially similar, even if individual components are not identical. This is highly compatible with the concept of creative style, which needs to be grasped as a whole. In traditional creative environments, cases of precise imitation of creative style are rare. However, with the rapid development of AI technology, this type of infringement is likely to become more common. In this context, the total concept and feel test can help address the cognitive challenges faced by judges when evaluating complex artistic elements. By considering public opinions, judges can make more informed, less subjective decisions, ensuring the fairness and reasonableness of the judgment.

5. Conclusion

The rapid advancement of AI technology has fundamentally challenged the traditional copyright protection framework, particularly in the context of creative style protection. This paper has examined the complex relationship between AI-generated works and copyright law, focusing on how AI's ability to precisely imitate creative styles complicates the conventional idea-expression dichotomy. The research shows that existing copyright law frameworks are increasingly inadequate in addressing the unique challenges posed by AI technology.

The findings demonstrate that creative styles, traditionally categorized as unprotectable ideas, may require a reassessment in the AI era. The precision and efficiency with which AI can now replicate distinct creative styles suggest that these styles embody more than mere ideas; they represent unique expressions of artistic vision developed through years of creative practice. This study proposes a redefinition of creative styles as special expressions worthy of copyright protection while also acknowledging the need to balance protection with innovation and fair use.

Looking forward, the evolution of copyright law in the AI era will require continued attention to technological developments and their implications for creative rights. Future research should focus on developing specific technical criteria for determining substantial similarity in style imitation cases, establishing clear boundaries for protectable elements of creative styles, and exploring innovative legal mechanisms that can adapt to emerging AI capabilities. The goal remains to foster innovation while protecting the legitimate interests of human creators in an increasingly AI-driven creative landscape.

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