Authorship and Rights Allocation in Algorithm-Driven Art: A Comparative Study of Eastern and Western Cultural Perspectives

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Abstract

This research investigates the complex intersection of algorithmic intervention in artistic creation through a comparative analysis of Eastern and Western cultural cognitive frameworks, specifically examining the determination of creative subjectivity and rights distribution mechanisms. As artificial intelligence increasingly becomes an integral part of the creative process, traditional paradigms of artistic authorship and rights allocation face unprecedented challenges that manifest distinctively across cultural boundaries. Drawing upon empirical data from major AI art platforms and analyzing legal precedents across different jurisdictions, this study reveals fundamental differences between Eastern and Western approaches. While Western legal frameworks, rooted in Enlightenment individualism, typically emphasize singular authorship and binary rights allocation, Eastern philosophical traditions, influenced by concepts like "wu-wei" and collective harmony, demonstrate greater flexibility in recognizing distributed creative agency. The research employs a mixed-methods approach, combining quantitative analysis of AI-generated artworks with qualitative examination of cultural narratives and legal frameworks from key art markets including China, Japan, the United States, and the European Union. This investigation uncovers how cultural cognitive differences significantly impact the conceptualization of algorithmic creativity and subsequent rights distribution models. The study proposes a novel hybrid framework that synthesizes Eastern and Western perspectives, suggesting a more nuanced approach to creative rights allocation that acknowledges both individual contribution and collective technological influence. These findings contribute to both theoretical discourse and practical policy development, offering insights for crafting culturally sensitive legal frameworks in an increasingly globalized digital art ecosystem.

Keywords: algorithmic creativity, cultural cognition, digital rights, comparative law, Eastern-Western perspectives, artistic subjectivity

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Introduction

The explosive growth of generative AI in artistic production has precipitated what might be termed a "civilizational crisis of authorshi" - a fundamental confrontation between competing cultural conceptions of creativity and ownership. Where Western legal systems, still bound to Woodmansee's (1994) "romantic author construct," struggle to reconcile algorithmic art with anthropocentric copyright traditions, Eastern jurisdictions are evolving more flexible frameworks that acknowledge the hybrid nature of machine-human creativity (Wu Handong, 2016). This study interrogates three core dimensions of this global controversy: (1) the metaphysical foundations of originality across cultural traditions, from Christian ex nihilo creation to Daoist ziran (自然, spontaneous emergence); (2) the jurisprudential manifestations of these differences in contemporary copyright disputes; and (3) the potential for developing transcultural legal solutions that respect civilizational diversity while ensuring equitable rights allocation.

This research makes three seminal contributions: First, it establishes the first comprehensive cultural-cognitive mapping of algorithmic authorship disputes across Eastern and Western jurisdictions. Second, it traces current legal divergences to their profound philosophical roots through art historical and theological analysis. Third, it proposes concrete mechanisms for international harmonization that move beyond Western-centric models. By exposing the unexamined cultural substrates of copyright law, the study provides essential tools for navigating what promises to be one of the most consequential intellectual property challenges of the digital age.

The Modern Predicament of Western Copyright Systems in Comparative Perspective

Under the impact of AI-generated art, Western copyright systems rooted in individualist philosophy are facing an unprecedented crisis of interpretation. The approaches taken by the United States and the European Union in addressing AI-created artworks reveal profound tensions within the Western copyright paradigm.

The American Doctrine of Originality: A Case Study in Dogmatism

The U.S. Copyright Office's (USCO) administrative rulings demonstrate remarkable doctrinal rigidity. In 2022, artist Kristina Kashtanova sought copyright registration for her graphic novel *Zarya of the Dawn*, which incorporated AI-generated illustrations created using Midjourney. When USCO discovered Kashtanova's undisclosed use of AI, it initiated proceedings to revoke the registration. Although Kashtanova's legal team argued that her creative contributions - including textual content, image selection, and overall arrangement - merited protection, USCO's 2023 final determination held that the Midjourney-generated images failed to meet the "human authorship" requirement under U.S. copyright law. The Office maintained this position despite Kashtanova's sophisticated prompt engineering and curation, effectively reducing Locke's labor theory to what might be termed a ritualistic fetish.

This jurisprudence was further cemented in *Thaler v. Perlmutter* (2025), where the D.C. Circuit Court affirmed that the Copyright Act categorically requires human authorship. The court's reliance on the 1976 Copyright Act and precedent demonstrates what Ginsburg (2018) identifies as the "originality paradox" - the simultaneous demand for human creative input and the lack of adequate tools to evaluate novel forms of human-AI collaboration. This legal

stance emerges from a specific historical trajectory: the fusion of Lockean labor theory with Romantic-era genius ideology, filtered through what Woodmansee (1994) terms the "authorial personality imperative."

The European Dilemma: Kantian Personhood in the Digital Age

EU jurisprudence, while more nuanced, remains constrained by Kantian personality theory. The Court of Justice's *Levola Hengelo* (2018) decision established that copyright protects works reflecting the "author's own intellectual creation" - a standard that German courts subsequently struggled to apply in *FRT v. DeepMind* (2022). There, judges invented the nebulous "determinative artistic choices" test to accommodate AI-assisted works, revealing civil law's characteristic bifurcation between economic rights and droit moral. This creates what might be called a jurisprudential schizophrenia: recognizing human contributions while remaining conceptually unequipped to address non-human creative inputs.

The French Contradiction: Moral Rights in Algorithmic Creation

A more profound contradiction is manifested in France's approach to AI art. In 2022, artist Jason M. Allen created a digital artwork titled *Théâtre D'opéra Spatial* using the AI platform Midjourney, which won first place in the digital art category at the Colorado State Fair. Allen attempted to secure copyright protection for this work, but his application was rejected on the grounds that the piece contained substantial AI-generated content and lacked the requisite creativity inherent to human authorship. When adjudicating the exhibition dispute concerning *Théâtre D'opéra Spatial*, the Paris Court, while acknowledging the creator's moral rights, refused to grant full copyright protection to the AI-generated portions. This bifurcated approach essentially represents a rigid interpretation of the principle of "inalienability of moral rights" as stipulated in Article 6bis of the Berne Convention, disregarding the hybrid characteristics of contemporary artistic creation.

Institutional Innovation From Eastern Wisdom

When facing the same technological challenges, East Asian legal systems have demonstrated greater adaptability. In 2023, Li used AI to generate an image titled "Spring Breeze Brings Tenderness" and published it on the Rednote platform. The defendant Liu used this image without permission as an illustration for an article published on *Baijiahao*, removing the signature watermark. Li claimed that Liu's actions infringed upon the right of attribution and the right of communication through information networks, and subsequently filed a lawsuit against Liu in the Beijing Internet Court.

The Beijing Internet Court's decision in *Li v. Baidu* established a three-pronged test, developing a "contribution assessment" method that creatively transformed the traditional "brush and ink standard" from calligraphy and painting authentication into modern legal rules. The judgment elaborately reasoned: (1) the degree of creativity embodied in prompt design; (2) the unpredictability of output results; (3) the artistic value of manual post-production adjustments. The court determined that the AI-generated image in question possessed the elements of "intellectual achievement" and "originality," qualifying it as a copyrightable work. The court noted that although the creative process of AI-generated content differs from traditional human creation, the plaintiff demonstrated original intellectual input through designing prompts and selecting parameters. The court explicitly stated that the AI model itself cannot be recognized as an "author" under copyright law;

rather, the user who configured the AI model (the plaintiff) is the author of the image and enjoys copyright ownership. The defendant's unauthorized use of the image as an illustration and removal of the signature watermark infringed upon the plaintiff's right of attribution and right of communication through information networks. As China's first copyright infringement case involving "AI text-to-image" generation, this ruling holds significant judicial importance and demonstrative effect.

This framework implemented the Confucian concept of "merit" in contemporary copyright law. This holistic thinking clearly benefits from the rich experience accumulated through creative conventions such as "ghost-writing" and "collaboration" in Chinese art history, reflecting what Wu Handong (2016) identified as China's "collective innovation paradigm." The analytical structure of this decision consciously mirrors traditional Chinese painting authentication methods, wherein masterpieces are evaluated according to brushwork technique (biFA) and conceptual composition.

In Japan, a manga artist or copyright holder claimed that their work was used by an unauthorized AI system to generate manga content similar to the original. When adjudicating this case, the Tokyo District Court focused on: (1) copyright ownership of AI-generated content: the court confirmed that AI-generated works cannot obtain copyright protection because copyright law requires works to be created by humans; (2) the degree of human author participation: the court emphasized that even with AI involvement in the creative process, the creative contribution of human authors remains the key factor for copyright protection; (3) the boundaries of fair use: the court indicated that if an AI's use of copyrighted works during learning and generation exceeds the scope of fair use, it constitutes infringement. The judge cited the Japanese classical literary tradition of "honkadori" (allusive variation), asserting that as long as the use of AI tools demonstrates the author's "dominant creative intent," it should be protected just as innovative referencing in waka poetry composition. This argumentative approach of directly comparing modern technology with traditional culture is almost unimaginable in Western rulings. The Supreme Court's "dominant creative intent" standard integrates elements from both traditional and modern creative practices: the master-apprentice dynamics of ukiyo-e workshop systems coexist with contemporary concepts of algorithmic transparency. This hybrid approach reflects Japan's unique capacity for technological assimilation while maintaining traditional aesthetic values, a phenomenon that art historian Tsuji Nobuo (2005) described as "Japan's aesthetics of adaptation."

Notably, both China and Japan have independently developed some form of "process value" assessment method when handling copyright issues related to AI art. Chinese courts focus on the "labor density" of creative input, while Japanese tribunals emphasize the "intentional continuity" of the creative process. Although these two approaches emphasize different aspects, both break through the Western copyright law's "all-or-nothing" rights determination model, providing valuable experience for constructing a gradient protection system.

Comparative Analysis of Philosophical Foundations

The fundamental divergences between Eastern and Western approaches to AI-generated artworks ultimately reflect two distinct epistemologies of creativity. Within the Western metaphysical tradition - spanning from Plato's theory of Forms to Christian creation theology - there persists an emphasis on the disruptive and transcendent nature of creative acts. This cognitive framework, when projected onto legal domains, manifests as an absolutist demand

for “originality.” The Western legal tradition's struggle with algorithmic creativity becomes comprehensible when traced to these theological roots.

In contrast, Eastern legal systems draw upon radically different philosophical resources. The Daoist parable of “Chef Ding Dissecting an Ox” (庖丁解牛) from the Zhuangzi (庄子) reveals the Chinese cultural conception of “Craft as Dao” (技艺即道) - where technical mastery embodies cosmic principles. Similarly, Zeami Motokiyo’s “Kaaden” (花传书) systematically articulates the progressive nature of artistic cultivation in Japanese tradition. The Daoist concept of “ziran” (自然, spontaneous emergence) and Confucian “wen” (文, cultural patterning) tradition undergird what Saussy (2016) terms “pattern recognition creativity.” This explains Chinese law's relative comfort with algorithmic art: where Western systems perceive threatening automatism, Eastern traditions discern “li” (理) - the natural ordering principles - in machine learning outputs. Japanese jurisprudence similarly benefits from aesthetic concepts like “mitate” (見立て) that legitimate reinterpretation as creative act. These intellectual resources enable East Asian legal systems to naturally accommodate creativity as distributed across human-machine collaborative processes, rather than requiring its concentration in decisive moments of individual inspiration.

This philosophical divergence manifests concretely in institutional design: Western copyright law establishes originality thresholds as gatekeeping mechanisms, while East Asian systems tend to construct contribution-based benefit allocation frameworks. The former emphasizes qualitative transformation in creative outcomes, the latter values quantitative accumulation in creative processes. The Western model’s fixation on the “eureka moment” of creation contrasts sharply with Eastern appreciation for incremental creative labor - a distinction traceable to their respective metaphysical foundations. Where Kantian aesthetics demands the imprint of individual genius, Confucian thought values the refinement of cultural patterns through collective practice. This fundamental difference in conceptualizing creative temporality - as punctual versus processual - generates the observable variance in how legal systems approach AI authorship.

Toward Culturally Inclusive Global Governance

Based on the above analysis, future international coordination should strive to build a multi-tiered protection framework. Meaningful international coordination must transcend technical legal adjustments to address fundamental cultural differences.

Substantive Rules

The protection system must incorporate gradated rather than binary thresholds. China’s “contribution-weighted” model provides a template but needs to be supplemented with Western-style attribution certainty and Japanese-style procedural transparency. For instance, AI art creation could be broken down into quantifiable contribution units such as conceptualization (30%), tool selection (20%), parameter adjustment (25%), and post-processing (25%).

Procedural Mechanisms

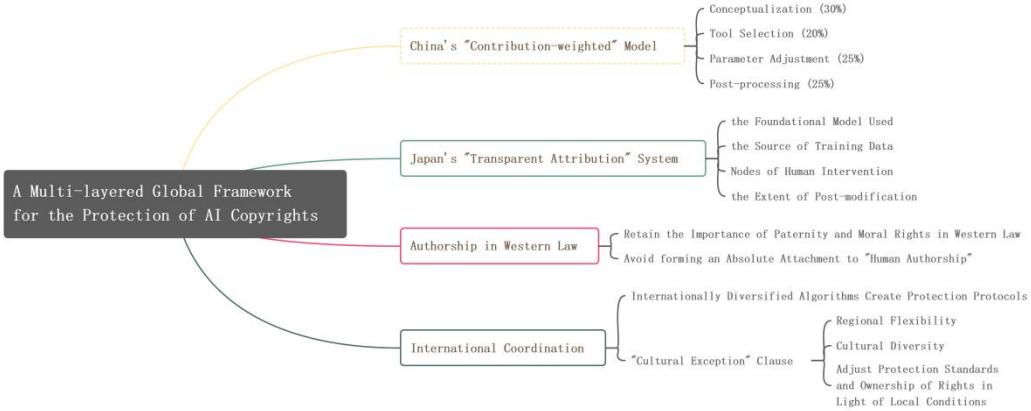
Attribution frameworks need cultural customization, with Japan’s “transparent attribution” system offering a good example. It could be required that AI-generated content must be labeled with: (1) the foundational model used; (2) the source of training data; (3) nodes of

human intervention; (4) the extent of post-modification. This disclosure obligation not only safeguards the public's right to know but also preserves the creator's reputation.

International Coordination

Retaining the importance of paternity and moral rights in Western law should emphasize the individual's authorship, originality and human intent, but it should not form an absolute attachment to "human authorship". Furthermore, there is a need to break through the rigid framework of the Berne Convention and adopt "international pluralism" (Sunder, 2012), establishing a dedicated "Algorithmic Creation Protection Protocol." This protocol could introduce a "cultural exception" clause, allowing different countries and regions to adapt protection standards and rights attribution for AI art based on local creative traditions, with regional implementation flexibility and UNESCO-inspired cultural diversity mechanisms.

Figure 1
A Multi-layered Global Framework for the Protection of AI Copyrights



Conclusion

The global rise of AI-generated art has triggered a constitutional crisis in global copyright regimes, revealing fundamental rifts in how different legal traditions conceptualize creative agency. Comparative analysis shows that the current disputes over algorithmic authorship are not merely technical legal challenges - they reflect profound civilizational differences in the ontology of creativity itself. Western systems remain bound by the "author-god" model, rooted in Christian creation theology and romantic worship of genius, increasingly at odds with the distributed reality of digital creativity. In contrast, Eastern traditions demonstrate the "juridical plasticity" identified by Tsai (2021) through frameworks such as China's proportional contribution analysis and Japan's transparent attribution principles. Eastern wisdom reminds us that creativity is never the product of an isolated moment but always exists in the dynamic interaction between humans and their tools. Future legal regimes should strive to capture this dynamic relationship rather than futilely seeking the imagined "decisive moment."

The challenges we face represent what Kuhn would consider a paradigm crisis in intellectual property law. Solutions require transcending the sterile debates over human versus machine creativity and addressing more fundamental questions: What constitutes artistic labor in the algorithmic age? How should the law recognize distributed creative systems? What balance between cultural specificity and global interactivity best fosters artistic innovation? As case

studies demonstrate, answers will not come from any single legal tradition but from what Liu Chuntian (2021) calls “civilizational legal dialogue.” Our task is neither to abandon the core purposes of copyright nor to cling to its contingent historical forms but to reimagine the protection of creativity for an era in which art arises both from iterative human-AI collaboration and from solitary genius. In this endeavor, the world's legal traditions offer a rich reservoir of conceptual resources - if we have the wisdom to synthesize them.

In this sense, the rise of AI art may provide us with a precious opportunity: to break the “author myth” that has persisted for two centuries and return to an essential understanding of creation as a social practice. What the law needs to develop is not more precise tools for rights definition but more open frameworks for understanding creativity - which may be the most valuable fruit of East-West cultural dialogue.

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