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The Adjudicative Logic and Functional Role of Chinese Courts in AI Governance

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Abstract: A structural divide exists between the rapid advancement of artificial intelligence and the relative stability of law. In the absence of dedicated AI legislation, response of Chinese courts to novel AI-related disputes through adjudication and their role in AI governance has become an important research topic demanding urgent attention in contemporary law. Adopting a comparative law perspective and drawing on a systematic analysis of typical AI-related cases decided by Chinese courts, this article distills three adjudicative logics employed by Chinese courts in handling AI cases. Firstly, "anthropocentrism", in copyright and personality rights, courts have consistently maintained that AI is a tool and that humans are the sole bearers of legal responsibility.AI can't be an author or a rights-holder. Secondly, a "two-stage liability assessment" by distinguishing between "technology development and provision" and "specific use," courts have achieved a dynamic balance between technology neutrality and accountability for unlawful acts. Thirdly, "judicial development of the law" where existing law provides no explicit answer, courts have filled legal gaps and created adjudicative standards through methods such as application by reference, analogy, and using general clauses. Through comparative analysis with U.S. and EU courts, current research reveals the different models of institutional division of responsibilities underlying the three adjudicative logics: judicial restraint in the United States, legislation-led governance in the European Union, and judicial pioneering in China. Accordingly, this study demonstrates four core functions of Chinese courts in AI governance. These include upholding human legal subjecthood to anchor the foundations of the rule of law, employing the two-stage assessment to achieve dynamic equilibrium, engaging in judicial development of the law to supply rules, and imposing strict accountability to control risks. The Chinese courts' pathway of "judiciary first, legislation to follow" is neither the "passive judicial waiting" of the United States nor the "legislation-led pioneering" of the European Union, but a realist path rooted in China's rule-of-law practice, offering a Chinese approach that may inform global AI governance.

Keywords: AI governance; adjudicative logic; anthropocentrism; judicial development of the law; comparative law

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1. Introduction

Artificial intelligence is advancing rapidly. The efficiency gains, normative restructuring, redistribution of power, and attendant risks triggered by technological acceleration have profoundly reshaped modes of production and economic structures. The ethical challenges posed by AI have far-reaching effects on legal order. AI ethics answers, from social and historical perspective, what AI ought and ought not to do. These questions concern not only AI itself but, more fundamentally, society, and courts have played a significant role in this domain through adjudication (Chen 2021). The outputs of generative AI are no longer; impractical products disconnected from reality as they were perceived in 2020. Rather, they have become concrete subjects of legal disputes addressed in court judgments. Due to the risks associated with AI, the law must not only prevent AI from developing in a "lawless realm" but also promote AI technological development for the benefit of the people, averting the "greatest insecurity" of failing to develop at all (Ding 2024). At the same time, there exists a structural imbalance between the rapid evolution of AI and the relative stability of law. Reconciling this misalignment between law and reality is a practical challenge facing courts worldwide. Adjudicative logic and legal methods used by Chinese courts to address novel AI-related disputes in the absence of dedicated AI legislation, and their functions in AI governance need in-depth research. Examining the logic and methods already established, using empirical experience to inform institutional improvement (L. Wang 2026), and maintaining the stability of rule-of-

law principles and the effectiveness of public governance within an ever-changing technological context, this has become an important research topic demanding urgent attention in contemporary sociology of law (Ji n.d.).

This article analyzes the above questions from a comparative perspective, focusing on the adjudicative practice of Chinese, U.S., and EU courts concerning AI issues. The argument proceeds in three stages. First, grounded in an analysis of Chinese courts' adjudicative practice in AI-related cases, it reveals the current adjudicative tendencies and underlying logic of Chinese courts. Second, through comparison with the U.S. and EU courts in specific analogous cases, it demonstrates how differing policy orientations produce divergent judicial practices. Third, it summarizes China's position of anthropocentrism, the two-stage assessment, and judicial development of the law, identifying the safeguarding and guiding role Chinese courts play in AI governance. It calls for legislative follow-up, allowing scope for future AI development, accumulating experience for future adjudication, and contributing Chinese empirical material to global AI governance.

2. Foundational Questions in AI-Related Adjudication

Although the legal disputes triggered by AI technology vary in form and cause of action, in adjudicating every AI-related case, courts cannot avoid answering three recurring legal questions. When an AI-related dispute enters the court, the judge must first answer: Is AI an "actor" or an "object of action" in this dispute? This leads to the first question. Once AI's legal status is clear, the judge must focus liability bearing party, and its legal basis. This leads to the second question. The answers to these first two questions often cannot be found directly in existing law, and judges must identify legal grounds for their decisions in areas where the law has not expressly provided, hence the third question. These questions are the focal points of legal controversy that courts must confront when adjudicating AI-related cases, and they thus constitute three key dimensions for studying the role and position of Chinese courts in AI governance. It is precisely through the adjudicative practice of repeatedly addressing these three questions that Chinese courts have gradually developed three interrelated and progressively developed patterns of adjudicative reasoning. This article will take these three questions as its starting point, systematically analyze typical Chinese court cases, distill their underlying adjudicative logic, and thereby reveal the unique functions courts perform in AI governance.

2.1 AI as an "Author," "Rights-Holder," or "Infringer" and protection of AI-Generated outputs

There is intense scholarly debate over whether AI should possess legal personality. Proponents argue that generative AI has, in essence, acquired rational capacities such as natural language ability, cognitive ability, and logical reasoning and judgment, thereby exhibiting quasi-human volitional characteristics that satisfy the preconditions for the capacity to bear responsibility. Once anthropocentric views of technology and the environment have been transcended, humanity should no longer adopt a purely instrumental view of AI systems or regard the human-AI relationship as purely one of master and servant. As AI systems demonstrate capacities for scientific and technological reasoning resembling those of humans, AI systems should be granted a measure of legal personality, enabling them to enjoy certain rights and assume certain obligations (Cheng 2024). Simultaneously, AI has been widely applied in practice to handle repetitive tasks and may, in certain respects, replace human occupations, exhibiting a degree of behavioral capacity. Hence, generative AI may be analogized to legal persons (juristic persons) and thereby acquire corresponding legal personality (Li 2025). The Berne Convention, while does not explicitly define the term "author," this absence of a definition does not restrict authorship to human beings. The context and indications within the Convention suggest that the term encompasses both human authors and legal entities (Gaffar and Albarashdi 2025).

By contrast, anthropocentric scholars argue that true AI should emerge from and continually evolve through big data. By extracting and analyzing correlations through searches of massive datasets and related operations, a machine can identify the behavioral patterns of most humans when a particular event occurs. It interacts with humans according to these patterns, creating the impression that one is conversing with a real person. Under Kant's philosophical proposition that "the human being is an end," humans, by virtue of their rationality, independent consciousness, and free will, should be subjects, whereas AI, lacking rationality, independent consciousness, and free will, can exist only as an object. No matter how far AI technology develops, the value criterion of "human-centeredness" should not change in any way (Li and Qi 2023). Current mainstream view holds that generative AI cannot presently acquire the legal personality of a natural person, because generative AI, in essence, generates text through programmed operations in machine language and cannot be equated with human rationality.

Qualification of AI-generated content that outwardly resembles a human-created work as a "work" should be determined according to the principles of copyright law. Setting aside the question of legal subjecthood for the moment, the process by which the content was produced should be analyzed first and assess whether it satisfies the requirement of originality (Q. Wang 2017).

2.2 Sharing Liability among users of AI-Generated Content, AI Platforms Operators, and AI Developers

Compared with the structure of infringement in the traditional "platform economy," generative AI infringement departs from the binary "platform-user" structure and involves a tripartite "developer-operator-user" structure. Although model developers fall within the broad category of network service providers, they should bear the responsibility of "content producers"; operators of AI products continue to bear the responsibility of service providers.[1]

The liability of generative AI service providers is debated in terms of fault-based and strict liability. Proponents of fault-based liability argue that while generative AI service providers should bear liability, they should not bear strict liability. The basis of liability for harm caused by generative AI should be consistent with the need to encourage AI development. At China's current stage, a prudent and accommodating approach should be taken to generative AI, encouraging its development as far as possible. If strict liability is applied to generative AI service providers, so that liability would arise whenever harm occurs, it might increase their burden constraining the development of the AI industry (L. Wang 2025). Proponents of strict liability, however, argue that

[1] See Zuo Jiayi and Feng Bingyin, "Research on Tort Liability Issues of Generative AI," Shanghai Intellectual Property Court, accessed April 18, 2026, https://www.shzcfy.gov.cn/detail.jhtml?id=1001544708.

when ordinary users commit infringing acts using AI products, the software designer or product manufacturer should bear corresponding product liability, because they better understand AI products and can effectively prevent infringing incidents. Moreover, victims face an increasingly daunting task in attempting to identify and prove that an AI system was the source of their harm. Furthermore, aggrieved parties do not always possess the necessary knowledge about a specific AI system, nor can they access the information essential to presenting a case in court (De Bruyne and Ooms 2025), making strict liability necessary in such circumstances.

For AI users, fault-based liability is more appropriate, with the determination of a user's fault focusing primarily on whether there was malicious inducement. When a user deliberately inputs infringing prompts or repeatedly attempts to generate content knowing that infringing content may result, fault should be found (He 2026). However, it is the user who issues instructions to the AI product, and the AI product produces the allegedly infringing output in accordance with the user's request. Accordingly, the user should be deemed the infringing party. Yet in substance, the user cannot foresee what content will be generated before the AI output is produced, still less determine whether it infringes another's copyright. The user accepts the AI generation service provided by the service provider and enters a contractual relationship with it, creating a contractual relationship for the performance of work (quoted in Dou 2024).

Regarding model developers' liability, some argue that although developers fall within the broad category of network service providers, they should bear the responsibility of "content producers". Others argue that AI should be treated as a product, with the risks arising from its operation brought within the framework of product liability; developers, as the designers and manufacturers of AI, should be liable for any "defects" that may exist therein. Supporters argue that, based on product liability, model developers should bear direct infringement liability because their inclusion of unauthorized content in training data makes the generation of infringing content possible. The law should not encourage or support "copyright-laundering devices." Opponents argue that model developers' data training has "substantial non-infringing uses," and that the technological purpose is not to generate infringing products but to form AI foundation models. Once AI services are sold, how users use them is beyond the model developer's control; unless there is inducement or solicitation, the model developer bears no infringement liability. Whether model developers bear infringement liability, and in what form, requires further clarification, because the relevant institutional arrangements will affect the scale and intensity of investment and deployment.[2]

2.3 Role of Courts when Law is silent

AI is characterized by a high degree of uncertainty and nonlinearity. Its developmental trajectory is difficult to fully predict, and there is often a temporal misalignment among the cycle of technological maturation, the point at which risks become apparent, and the degree of social acceptance. Against this backdrop, the timing of legislation directly affects the effectiveness of institutional responses and the suitability of the governance system. Premature legislation may, because the technological pathway has not yet stabilized and the types of risks are not yet clear, result in legal norms lacking specificity and enforceability, thereby inhibiting technological innovation and affecting emerging business forms. Conversely, delayed legislation may lead to the loss of an opportunity for regulation and governance once risks have materialized and consequences have spread, making it difficult to respond to societal concerns in a timely manner, or even triggering a crisis of trust in governance (Fu 2025). AI technology is still evolving; the degree of social acceptance and technological development trends are not entirely clear, and no one knows what direction AI development will take in the future. It is premature to speak of legislation, yet practical social problems and adjudicative demands have already arisen. In AI cases, therefore, judges' creative legal interpretation and gap-filling function are irreplaceable. Courts' responses to practical problems encountered when the law provides no explicit answer are not only required by social realities but also play a decisive role in shaping the future legal stance on AI issues.

3. Three Adjudicative Logics of Chinese Courts in AI Cases

3.1. Anthropocentrism: AI as Tool, Humans as the Sole Bearers of Legal responsibility

3.1.1 The Copyright Domain: AI cannot be an Author as Human creation is a necessary condition for a work

Under the copyright law framework, the core questions courts face when adjudicating AI-related cases are: Can AI be an "author"? Do AI-generated outputs constitute "works"? In their adjudicative practice, courts follow a sequence of first determining whether human creative activity exists, then assessing the degree of human intellectual input, and finally determining the attribution of rights.

In *Feilin Law Firm v. Baidu, Inc.* (2019),[3] the Beijing Intellectual Property Court for the first time clearly answered the question of whether AI can be an author. In this case, Feilin Law Firm claimed that the Report on Judicial Big Data Analysis of the Film and Entertainment Industry, generated using the "Wolters Kluwer Advanced Database," constituted a work, and that Baidu's unauthorized reproduction constituted infringement. The court of first instance found that while the analytical report automatically generated by the Wolters Kluwer Advanced Database based on keywords entered by the user possessed a certain degree of originality, "under current legal provisions, literary works must be created by natural persons." The court further noted: "With the development of science and technology, such 'works' intelligently generated by computer software increasingly resemble those of natural persons in content, form, and even mode of expression. However, based on the current level of technological and industrial development, if the intellectual and economic investments in such software can be adequately protected within the existing rights protection system, it is not appropriate to depart from the fundamental norms governing subjects of civil law." Accordingly, the court held that the analytical report automatically generated by the Wolters Kluwer Advanced Database did not constitute a work, and neither the

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2 See Zuo and Feng, "Research on Tort Liability Issues of Generative AI."

3 See *Beijing Feilin Law Firm v. Beijing Baidu Netcom Science and Technology Co., Ltd.*, Beijing Intellectual Property Court, Civil Judgment No. (2019) Jing 73 Min Zhong 2030.

software developer (owner) nor the user could be deemed the author. The appellate court affirmed. This judgment upheld the principle that "creation by a natural person is a necessary condition for a work under copyright law."

In the Dreamwriter case (*Shenzhen Tencent Computer Systems Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd.*, 2019),[4] the court addressed the question of "whether AI can be an author" in affirmative terms. The plaintiff used the "Dreamwriter" intelligent writing assistant to generate financial articles on the stock market, at the end of which appeared the notation: "This article was automatically written by Tencent Robot Dreamwriter." As the article constituted a literary work, the court specifically addressed the status of the AI tool in the creative process: "The automatic operation of the Dreamwriter software is neither unprompted nor a manifestation of self-awareness; the manner of its automatic operation reflects the plaintiff's choices and is also determined by the characteristics of the Dreamwriter software technology itself. To regard the process of the Dreamwriter software's automatic operation solely as the creative process would, in a sense, treat the computer software as the subject of creation, which is inconsistent with objective reality and unfair." The court clearly stated that the plaintiff's core creative team's arrangements and choices in data input, trigger condition setting, and the selection of templates and corpus styles constituted intellectual activities directly connected to the specific mode of expression of the article in question, and therefore the plaintiff could enjoy copyright as the author of a "legal-person work" (a work attributed to a legal person under Chinese copyright law). The core logic of this judgment is: AI is merely a tool and cannot be an author; only humans (or juridical persons by legal fiction) can be authors under copyright law.

If the Dreamwriter and Feilin cases established the "human author" principle in affirmative terms, the Fuzhou E-Commerce Company Copyright Infringement Case (2025)[5] delineated its boundary by exclusion. In this criminal case, the defendant used AI "image-to-image" technology to generate infringing images based on another's copyrighted artistic works and used them to manufacture puzzles for sale. The court found that the generation process of the images in question "required only simple parameter settings and image selection, without further optimization or creation of the generated images, and the intellectual contribution to the generative output was negligible," and that the generated images were "identical in the vast majority of elements such as outline, composition, lines, and element distribution" to the original works, constituting substantial similarity. Accordingly, the conduct constituted the crime of copyright infringement, and the actor bore criminal liability. The court further noted that images generated using AI "image-to-image" technology lacked originality and should be deemed infringing reproductions. This case established that "the degree of human intellectual input is the core standard for determining whether AI-generated outputs constitute works". Where humans have performed only simple operations without creative intervention, AI-generated outputs not only fail to receive protection but may instead constitute infringement.

In *Lin v. an Inflatable Structure Company* et al. (Copyright Infringement),[6] the court's approach to the evidentiary burden on a party claiming copyright in AI-generated content is apparent. The plaintiff claimed that images generated through Midjourney software constituted artistic works. The court held that although the plaintiff had used tools such as Midjourney and Photoshop and completed the creation through multiple modifications of prompts, parameter adjustments, and post-production editing, the copyright claimed should be "limited to the two-dimensional artistic work as set forth in the annex to the work registration certificate," rather than the entire "three-dimensional heart-shaped installation." The court indicated that while the law does not prohibit AIGC from receiving copyright protection when it possesses originality, the degree of originality of AIGC must still be comprehensively assessed considering the specific circumstances of the case. Implicit in the judgment was the requirement that a party claiming copyright in AI-generated images must provide original records and screenshots documenting creative ideas, input instructions, parameter settings, and revisions, to prove that their "individualized choices and arrangements" satisfied the originality requirement. This case established the rule on the allocation of the burden of proof: the originality of AI-generated outputs must be proved by the party claiming rights.

These four cases, from different angles, point to a common core conclusion: in the copyright domain, Chinese courts consistently adhere to "anthropocentrism"; AI cannot be an author, and only humans (or juridical persons by legal fiction) can enjoy copyright; whether AI-generated outputs can be protected depends on the degree of human intellectual input, not on whether AI technology was used.

3.1.2 The Personality Rights Domain: AI Voices and Virtual Personas belong to Natural Persons

Within the framework of personality rights law, the core questions are: Are AI-synthesized voices and AI-generated virtual personas protected by law? To whom do these rights and interests belong? Judicial practice indicates that AI-synthesized voices and virtual personas cannot themselves be subjects of personality rights. Where they have an identifiable connection with a specific natural person, they fall within the scope of protection of that natural person's personality rights; unauthorized use constitutes infringement of the natural person's personality rights.

(1) *Yin v. an Anonymized Beijing AI Technology Company* et al. (2024)[7] was the nation's first AI voice infringement case, establishing the basic rule that AI-synthesized voices are protected by voice rights. The plaintiff, Yin, was a voice actor. The defendant software company used just one sound recording made by Yin as source material and employing AI and other technological processing, generated a text-to-speech product and sold it to third parties. Examination in court suggested that the AI voice was highly consistent with Yin's timbre, intonation, and pronunciation style.

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4 See *Shenzhen Tencent Computer System Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd.*, Nanshan District People's Court, Shenzhen, Civil Judgment No. (2019) Yue 0305 Min Chu 14010.

5 See Criminal Judgment No. (2025) Jing 0112 Xing Chu 558.

6 See Civil Judgment No. (2024) Su 0581 Min Chu 6697.

7 See Beijing Internet Court, Civil Judgment No. (2023) Jing 0491 Min Chu 12142; People's Court Case Database, Case No. 2025-07-2-474-001. For a report of the judgment, see "Does Using AI to Generate Another Person's Voice Constitute Infringement?," *People's Daily*, October 10, 2024, https://paper.people.com.cn/rmrbwap/html/2024-10/10/nw.D110000renmrb_20241010_3-19.htm.

The court first addressed a preliminary question: Does an AI-synthesized voice fall within the scope of voice rights protection? Invoking Article 1023, paragraph 2 of the Civil Code, "The provisions on the protection of likeness rights shall apply, by reference, to the protection of a natural person's voice", the court held that the protection of voice rights depends on "identifiability". The court further established a test: "Where a voice synthesized using artificial intelligence can, based on its timbre, intonation, and pronunciation style, cause the general public or the relevant public to associate it with a particular natural person, it may be deemed to possess identifiability." In this case, the AI voice was highly consistent with Yin's own voice and could evoke thoughts or emotional responses associated with Yin in an ordinary listener; it therefore fell within the scope of protection of Yin's voice rights.

The court found that the defendants' use lacked lawful authorization. Although a defendant cultural company held copyright in the sound recording, that right "did not include the right to authorize others to use Yin's voice for AI-based purposes." The Data Authorization Letter provided by the defendant was not signed by Yin personally, and the authorization therefore lacked a lawful basis. The court ultimately ordered the defendants to cease infringement, issue a formal apology, and pay economic damages of 250,000 yuan.

The case rulings state clearly: "Where, with respect to a voice processed by artificial intelligence technology, the general public or a particular section of the public can, based on timbre, intonation, and pronunciation style, identify a specific natural person, that voice falls within the scope of protection of the natural person's voice rights. The unauthorized use of a voice processed by artificial intelligence technology constitutes infringement of the natural person's voice rights."

(2) *He v. an Anonymized Shanghai AI Technology Company* (Network Infringement Dispute, 2021)[8] extended personality rights protection to the domain of AI virtual personas. The plaintiff, He, was a well-known public figure. The defendant operated an unnamed bookkeeping application that allowed users to create their own "AI companion" virtual characters, specifying their names, avatars, and relationship roles. Numerous users created AI characters using He's name and likeness. The defendant, through algorithms, categorized these characters, produced conversational corpora, and recommended them to other users, even allowing users to set intimate dialogue tags such as "love you" and "hug," and referring to the function that allowed users to create conversational corpora as "training."

The court found the challenged conduct infringed He's rights to name and likeness. The court noted that the defendant, "through rule-setting and algorithm design, allowed users to use He's name and likeness to create AI characters ... effectively projecting the composite persona formed by He's name, likeness, personality traits, and other characteristics onto a virtual character, creating He's virtual persona" — this constituted use of the overall persona incorporating He's likeness and name.

Further, the court found the challenged conduct infringed He's general personality rights. Under Article 990 of the Civil Code, natural persons enjoy other personality rights and interests arising from personal freedom and human dignity. The court held that the software at issue allowed users to arbitrarily set intimate relationships with "He" and even used the term "training," infringing He's "interest in personal freedom and the interest in respect for one's personhood." Although He, as a public figure, was subject to certain limitations on the protection of his personality interests, the defendant's conduct "clearly exceeded reasonable limits." The holding of the case clearly states: "A natural person's personality rights extend to their virtual persona; the unauthorized use of a natural person's name and likeness to create a virtual persona and engage in commercial exploitation constitutes infringement of the natural person's personality rights."

(3) Beyond the two cases included in the People's Court Case Database, other cases in the personality rights domain also reflect the same "anthropocentric" stance. In the Yu case (the "AI Face-Swap" case, 2023),[9] the defendant used "AI face-swap" technology to replace the facial information of individuals in pornographic videos with others' facial information, fabricating and generating pornographic videos and images. The Hangzhou Internet Court found that facial information constitutes biometric information and is sensitive personal information; the defendant's processing was carried out without the consent of the data subjects and constituted infringement of others' personal information rights and interests. The court also supported the procuratorate's initiation of a civil public interest lawsuit and ordered the defendant to cease infringement, delete the information, extend a formal apology, and pay damages of 60,000 yuan. This case reaffirmed, from the angle of personal information protection, that the elements processed by AI technology are attributes of natural persons' personalities, rights belong to natural persons, and AI itself cannot be a subject of rights.

Additionally, in other civil cases involving "AI face-swapping," courts have generally held that the unauthorized use of another's likeness to produce AI face-swapped material constitutes infringement of the right to likeness.[10] These cases collectively point to one conclusion: regardless of the technological means, the core of personality rights protection remains "identifiability" — that is, so long as the result of AI processing can be linked to a specific natural person, that natural person's personality rights and interests should be protected.

3.2 The Two-Stage Liability Assessment: Whether the Technology Is Neutral and Whether the Specific Use Is Unlawful

When determining whether the AI-related conduct of different actors is unlawful and whether liability should attach, Chinese courts generally employ a two-stage analytical framework. At the first stage, the court assesses whether the development and provision of technology are themselves neutral: in principle, the research and development of AI technology, the provision of foundation models, and making platform functions available should not readily be deemed unlawful. At the second stage, the court assesses

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8 See Beijing Internet Court, Civil Judgment No. (2020) Jing 0491 Min Chu 9526; Beijing Fourth Intermediate People's Court, Civil Ruling No. (2021) Jing 04 Min Zhong 777; People's Court Case Database, Case No. 2025-07-2-369-001.

9 See Hangzhou Internet Court, Judgment No. (2023) Zhe 0192 Min Chu 4563, August 4, 2023; People's Court Case Database, Case No. 2025-07-2-525-001.

10 See Civil Judgments Nos. (2022) Hu 0116 Min Chu 13856; (2024) Chuan 7101 Min Chu 5615; (2025) Yu 1426 Min Chu 4081; (2025) Yu 1002 Min Chu 5748; (2024) Yu 0113 Min Chu 25565; (2023) Yu 0105 Min Chu 36081; and (2025) Zhe 0108 Min Chu 666.

whether the specific use is unlawful: where technology is used in practice to generate or disseminate infringing content or to carry out illegal acts, the user or platform shall bear corresponding liability if it has failed to exercise reasonable care.

3.2.1 Technology Development and Provision Are in Principle Neutral to Encourage Innovation

(1) The Hangzhou AI Platform Case: Learning During the Training Stage Does Not Constitute Infringement

In the Hangzhou AI Platform Case (an Anonymized Shanghai Cultural Development Company v. an Anonymized Hangzhou AI Technology Company),[11] the plaintiff claimed that the defendant operated an "AI platform" providing the Stable Diffusion foundation model and LoRA model training functions, allowing users to upload images to train personalized models and generate infringing content, and that the defendant should bear infringement liability. In analyzing whether the defendant's conduct constituted infringement, the court first distinguished between "technology development and provision" and "specific use."

The Hangzhou Internet Court clearly stated: "From the perspective of promoting the development of generative AI technology, a relatively lenient and accommodating standard should be adopted when assessing whether data input and training activities for large models constitute infringement." The court further elaborated: "The development of generative AI requires substantial training data and inevitably involves the use of others' works. The purpose of using copyrighted works to train generative AI should, in principle, be to learn the ideas, language, styles, and patterns of pre-existing works, rather than to reproduce the original expression of those works." The court held that where training "merely learns from the ideas, structures, and patterns in the data, rather than aiming to reproduce the expression of the works, and does not affect the normal use of the original works or prejudice the legitimate rights and interests of the copyright holder, it may be deemed fair use."

This reasoning established an important adjudicative rule: AI model training, when undertaken for "learning" purposes, is in principle not deemed infringing. The court arrived at this determination based on a balancing of technological innovation and rights protection: an overly stringent approach to finding infringement in training would seriously impede the development of the AI industry, whereas accommodating training conduct facilitates technological progress and industrial innovation.

(2) The Dreamwriter Case: The Value of AI-Assisted Creation Should Be Affirmed

In the Dreamwriter case, the court similarly demonstrated recognition of the neutrality of AI technology. The plaintiff used the "Dreamwriter" intelligent writing assistant to generate financial articles on the stock market, which the defendant reproduced without authorization. In finding that the articles in question constituted works, the court did not deny their copyrightability on the ground that they were AI-assisted.

The court's core reasoning was: "The automatic operation of the Dreamwriter software is neither unprompted nor a manifestation of self-awareness; the manner of its automatic operation reflects the plaintiff's choices and is also determined by the characteristics of the Dreamwriter software technology itself. To regard the process of the Dreamwriter software's automatic operation solely as the creative process would, in a sense, treat the computer software as the subject of creation, which is inconsistent with objective reality and unfair."

The court further noted that the plaintiff's core creative team's arrangements and choices in data input, trigger condition setting, and the selection of templates and corpus styles constituted intellectual activities directly connected to the specific mode of expression of the articles in question, and therefore the articles constituted legal person works. This determination reflects the position that the value of AI-assisted creation should receive legal recognition, and the legitimacy of creative output should not be denied merely because AI was used.

3.2.2 Strict Accountability when specific use is unlawful

If the "first-stage assessment" reflects the court's tolerance and accommodation of technological innovation, the "second-stage assessment" reveals the court's resolute stance when technology is abused. When AI technology is used in practice to generate or disseminate infringing content or to carry out illegal acts, users or platforms that fail to exercise reasonable care will be held strictly accountable under civil law and may even face criminal liability.

(1) The Hangzhou AI Platform Case: Platform Liable for Failing to Remove User-Generated Infringing LoRA Models

In the Hangzhou AI Platform Case, the court did not stop at the finding that training conduct did not constitute infringement at the first stage. It further examined the platform's knowledge of and response to users' specific infringing conduct.

In this case, the defendant operated an "AI platform" that allowed users to upload images to train personalized LoRA models. The plaintiff discovered that a user had uploaded "Ultraman" images downloaded from the internet, trained an "Ultraman LoRA model," and published the model in the platform's "Square" section for use by other users. The sample images of the LoRA model and the images generated by users were substantially similar to the plaintiff's copyrighted "Ultraman" artistic works. The LoRA model had been used as many as 1,000 times, and the platform derived direct economic benefits from membership fees, top-ups, and the like.

In determining the platform's liability, the court stated: "The defendant, as a generative AI service provider, ought to have known that there was a substantial likelihood of infringement on its platform." The reasons included: First, the "Ultraman" works at issue were well known, the platform had established an "IP Works" category within its "Square" and "LoRA Model" sections, and the display images of some LoRA models directly used infringing images bearing "Baidu Baike" watermarks, the platform "ought to have known" of the infringement. Second, the platform directly profited through membership fees, top-ups, and other means, and user-generated infringing content could be converted into platform traffic and revenue. Third, although the defendant had stated its intellectual property protection obligations in its user agreement and provided complaint and reporting channels, at

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[11] See Hangzhou Internet Court, Civil Judgment No. (2024) Zhe 0192 Min Chu 1587, aff'd, Hangzhou Intermediate People's Court, Civil Judgment No. (2024) Zhe 01 Min Zhong 10332. For a summary, see European Commission, IP Helpdesk, "Ultraman AI Case in China: Defining Copyright Liability for Generative AI Providers," February 18, 2025, https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/ultraman-ai-case-china-defining-copyright-liability-generative-ai-providers-2025-02-18_en.

the time the plaintiff gathered evidence, the platform had not proactively taken measures such as removal or blocking against manifestly infringing LoRA models and images.

The court ultimately held: "The defendant failed to discharge a duty of care commensurate with its technological capacity and platform control, constituting contributory infringement." The court ordered the defendant to delete the infringing images and LoRA models, cease providing publication and application services for the relevant models and compensate the plaintiff for economic losses and reasonable expenses in the amount of 30,000 yuan.

Thus, while an AI platform does not bear liability merely for providing the technology itself, where the platform knows or ought to know that users are using its technology to commit infringing acts and fails to take necessary measures, it will be liable for contributory infringement. The platform cannot evade liability on the ground of "technology neutrality"; its duty of care should be commensurate with its technological capacity, profit model, and degree of control.

(2) The Yu Case: Liability for Using AI Face-Swapping to Produce Pornographic Videos

If the Hangzhou AI Platform Case concerned platform liability, the Yu Case (Case No. (2023) Zhe 0192 Min Chu 4563) focused on the direct liability of an individual for abusing AI technology.

The defendant, Yu, learned online how to use "AI face-swap" software, collected the facial information of over one hundred individuals from the internet and other sources, and, without obtaining these individuals' consent, used the "AI face-swap" software to replace the facial information of individuals depicted in pornographic videos with the collected facial information, fabricating and generating pornographic videos and images. Between 2021 and August 2022, Yu created six groups on a social networking application, with a combined membership of over 2,000; membership in five of the social groups required payment of membership fees ranging from 198 to 498 yuan. Yu posted over 1,000 pornographic videos and over 1,000 pornographic images fabricated using the "AI face-swap" software in these groups. Additionally, Yu sold the "AI face-swap" software to others and provided tutorials, provided facial model materials required for face-swapping, and offered customized face-swap video services to others, profiting several thousand yuan.

The People's Procuratorate of Xiaoshan District, Hangzhou, initiated a criminal prosecution against Yu for the suspected crime of producing and disseminating obscene materials for profit, and simultaneously brought a civil public interest lawsuit for personal information protection. In its civil public interest litigation judgment, the Hangzhou Internet Court held: "Facial information constitutes biometric information, and biometric information constitutes sensitive personal information. The processing of biometric information such as facial information requires not only the separate consent of the individual but also compliance with special provisions of administrative regulations." Yu's "processing of sensitive personal information such as facial information was carried out without the consent of the relevant data subjects, constituting infringement of others' personal information rights and interests." At the same time, Yu "used the production of face-swapped pornographic videos and images as a lure, and, within specific groups he created for publishing pornographic content, sold 'AI face-swap' software and taught 'AI face-swap' technical tutorials for profit," significantly increasing the risk of infringement of sensitive facial biometric information of an unspecified number of individuals.

The court ultimately ordered Yu to cease infringement, delete all personal information involved in the case that was in his possession, issue a public apology, and pay 60,000 yuan in damages for harm to the public interest. In separate criminal proceedings, Yu was prosecuted for producing and disseminating obscene materials for profit.

This case reflects the "strict accountability" stance on two levels. First, at the level of civil public interest litigation: where the abuse of AI face-swap technology infringes the personal information rights and interests of numerous individuals, the procuratorial authorities may bring a public interest lawsuit even in the absence of a specific victim filing suit. Second, in criminal proceedings: using AI technology to produce pornographic videos for profit is subject to the same accountability as traditional means and may even result in a presumption of "knowledge" by virtue of technological capability. The core of the court's adjudicative logic is that unlawful acts committed using AI entail legal liability just as those committed through traditional means do.

3.3 Judicial Development of the Law

3.3.1 The Legitimacy of Judicial Development of the Law

In the absence of dedicated AI legislation or explicit provisions in existing law, on what basis may courts legitimately address AI-related cases through expansive interpretation and gap-filling?

This legitimacy can be demonstrated on three levels. The starting premise is that a judge's adjudicative activity is not confined to the literal meaning of statutory rules; at times it may transcend such literal meaning, at which point the activity moves from legal interpretation into judicial development of the law (Lei 2015).

First, the principle that a court may not refuse to adjudicate constitutes a functional authorization for courts to engage in judicial development of the law. Although China's Civil Procedure Law does not explicitly provide for the prohibition against refusing to adjudicate, the principle that "a judge shall not refuse to adjudicate" has been widely applied in China's judicial practice (Fan 2021). When an AI-related dispute enters the court, but the law provides no ready answer, the choice facing the court is not "whether to develop the law" but "how to develop the law." Gap-filling is not only the court's authority but also its duty. Refusing to fill a gap is, in many circumstances, tantamount to refusing to adjudicate. Categorically denying the possibility of judicial development of the law is itself already a normative stance (Larenz 2020).

Second, China's existing legal system itself provides institutional openings for judicial development of the law. Enabling provisions such as Article 1023, paragraph 2 of the Civil Code ("shall, by reference, apply the relevant provisions on the protection of the right to likeness"), the catch-all provision on general personality rights in Article 990, the general clause in Article 2 of the Anti-Unfair Competition Law, and the open-ended provision in Article 3 of the Copyright Law concerning "other intellectual achievements that possess the characteristics of a work", all indicate that the legislature foresaw that statutory law cannot anticipate every possibility and left room for the judiciary to respond to novel disputes within the existing framework. The courts' application of these provisions in AI-related cases is not "law-making" outside the statutory framework but the development of law within it.

Third, the case guidance system and the hierarchical supervision mechanism provide institutional constraints for judicial development of the law. AI-related decisions included in the People's Court Case Database operate as reference points for adjudication, using exemplary reasoning to promote greater consistency in judicial understanding (Cao 2026). Moreover, the Supreme People's Court can unify adjudicative standards by selecting and publishing typical cases, and higher courts can correct improper judicial development of the law through appellate and retrial procedures, promptly clarifying uncertainties in the application of law, enhancing the efficiency of legal application, reducing the costs of adjudication, and achieving the unity of fairness and efficiency. Well-reasoned cases, through reasoning that balances fairness, reason, and law, greatly enhance their persuasiveness in the minds of the public and will continue to perform the important function of unifying judicial application and encouraging public confidence in the judiciary (Chen and Zhang 2026). This institutional arrangement ensures that courts' judicial development of the law does not operate arbitrarily but operates within a hierarchical system of constraints.

3.3.2 Specific Manifestations of Judicial Development of the Law

(1) Application by Reference: Article 1023 of the Civil Code Applied to AI Voices

In *Yin v. an Anonymized Beijing AI Technology Company* et al., the core question facing the court whether an AI-synthesized voice fall within the "voice" protected by the Civil Code. Article 1023, paragraph 2 of the Civil Code merely provides that "the provisions on the protection of likeness rights shall apply, by reference, to the protection of a natural person's voice," and does not explicitly state whether AI-synthesized voices are within the scope of protection. The court filled this legal gap through application by reference.

The court's reasoning proceeded as follows: First, the protection of the right to likeness takes "identifiability" as its core standard. Hence, the unauthorized use of another's likeness constitutes infringement if it enables the public to identify a specific natural person. Accordingly, the protection of voice rights should likewise take "identifiability" as its prerequisite. Second, although an AI-synthesized voice is not produced directly by a natural person, where its timbre, intonation, and pronunciation style are highly consistent with those of a specific natural person and can cause the general public to associate it with that natural person, it should be deemed to fall within the scope of protection of that natural person's voice rights. On this basis, the court created the "identifiability" standard: "Where a voice synthesized using artificial intelligence can, based on its timbre, intonation, and pronunciation style, cause the general public or the relevant public to associate it with a particular natural person, it may be deemed to possess identifiability."

This adjudicative method emphasizes to abstract the core principle (identifiability) from an existing legal rule (protection of the right to likeness) and apply it by reference to a new AI scenario (AI-synthesized voice) not explicitly addressed by law. The court did not exceed the text of the Civil Code; rather, through interpretation and application by reference, it extended traditional rules to new technological domains, achieving judicial development of the law.

(2) Application by Analogy: The Legal-Person Work Regime Applied to AI-Generated Outputs

In the Dreamwriter case, the core question facing the court was: Does the AI-generated article constitute a "work"? If so, to whom do the rights belong? Article 11, paragraph 3 of the Copyright Law provides: "A legal person or other organization shall be deemed the author of a work created under its auspices, representing its will and for which it assumes responsibility." This provision originally applied in traditional creative settings , i.e., works created by the employees of an organization with legal personality. But in the AI-generated output scenario, there are no "employees," only AI software. The court, through application by analogy, extended the legal-person work regime to AI-generated outputs.

The court's reasoning proceeded as follows: First, the article in question was completed under the plaintiff's auspices by a core creative team comprising editorial, product, and technology development teams using the Dreamwriter software, satisfying the "under the auspices of a legal person" element of a legal-person work. Second, the notation at the end of the article , "This article was automatically written by Tencent Robot Dreamwriter", attributed authorship to "Tencent," pointing to the plaintiff and indicating that the plaintiff assumed responsibility for the article in its dealings with third parties, satisfying the "legal person assumes responsibility" element. Third, although the AI software was not an "employee," the core creative team's arrangements and choices in data input, trigger condition setting, and the selection of templates and corpus styles constituted intellectual activities directly connected to the specific mode of expression of the work, functionally analogous to "employee creation" in the legal person work context. Accordingly, the court found the article in question to be a legal-person work, with the plaintiff deemed the author.

The essence of this adjudicative method is to apply the legal-person work regime — originally applicable to the "legal person–employee" relationship , by analogy to the "legal person–AI tool" relationship. The two share the core characteristics of "under the legal person's auspices, reflecting the legal person's will, and with the legal person assuming responsibility," thus permitting application by analogy. Through this method, the court provided a solution for the attribution of rights in AI-generated outputs without amending the Copyright Law.

(3) Application of General Clauses: Article 2 of the Anti-Unfair Competition Law Regulating AI-Generated False Information

In *Alibaba v. Li Moumou* (Unfair Competition Dispute),[12] the court addressed a new form of conduct. The defendant used AI to generate false information erroneously associating "Alibaba" with an unrelated entity, "Alibaba Holding (Shenzhen) Co., Ltd." This conduct did not fall within any of the specific types of unfair competition enumerated in Chapter 2 of the Anti-Unfair Competition Law (such as passing off, false advertising, commercial defamation, etc.). The court regulated this novel improper conduct by applying Article 2 of the Anti-Unfair Competition Law (the general clause).

Article 2 of the Anti-Unfair Competition Law provides: "In their production and business activities, undertakings shall follow the principles of voluntariness, equality, fairness, and good faith, and shall observe the law and generally accepted business ethics. For the purposes of this Law, 'unfair competition' means conduct of undertakings in their production and business activities that

[12] See Civil Judgment No. (2024) Zhe 0108 Min Chu 10311.

violates this Law, disrupts the order of market competition, and prejudices the lawful rights and interests of other undertakings or consumers." The court held that the defendant, as the operator of a professional promotional account, used AI to generate false information associating the plaintiff with a non-existent company, violating the principle of good faith and generally accepted business ethics, and prejudicing the plaintiff's lawful rights and interests, thereby constituting unfair competition.

The court specifically noted that the defendant could not escape liability on the ground that "the content was generated by AI." As "a professional promotional account with a degree of influence," the defendant should have possessed "a certain degree of professional awareness" and bore a duty to verify AI-generated content; the failure to conspicuously label AI-generated content also constituted a failure to exercise due care. The essence of this method is to evaluate novel conduct, where specific rules are insufficient, by applying the principles of good faith and business ethics contained in general clauses to fill legal gaps. The court did not create new legal rules but applied existing general principles to new AI scenarios.

(4) Courts' Creation of Adjudicative Standards for Similar Cases

Through the above legal methods, Chinese courts have created a series of workable adjudicative standards in individual cases, providing guidance for subsequent similar cases:

(i) The "Identifiability" Standard

With respect to whether AI-synthesized voices are protected by voice rights, courts have created the "identifiability" standard: where the general public or the relevant public can associate the voice with a specific natural person on the basis of its timbre, intonation, and pronunciation style, it falls within the scope of protection of that natural person's voice rights. This standard has since been included in the People's Court Case Database and serves as a reference for courts at all levels when adjudicating similar cases.

(ii) The "Originality" Assessment Factors

With respect to whether AI-generated outputs constitute works, courts have distilled a standard centered on "the degree of human intellectual input": where humans have participated substantially (as in the Dreamwriter case, where the core creative team made arrangements and choices), AI-generated outputs may receive protection; where humans have merely set simple parameters and lacked creative intervention (as in the Fuzhou E-Commerce Company case, where "only simple parameter settings and image selection were required"), AI-generated outputs constitute infringing reproductions. This standard provides an operable boundary for distinguishing lawful AI-assisted creation from unlawful reproductions made using AI.

(iii) The "Reasonable Duty of Care" Standard

With respect to the liability of AI platforms and content publishers, courts have established a duty-of-care standard commensurate with their technological capacity, profit model, and degree of control. In the Alibaba case, the professional promotional account bore a duty to verify AI-generated content and could not claim exemption on the ground of "AI generation." In the Hangzhou AI Platform Case, the platform was held to have committed contributory infringement by failing to discharge a duty of care commensurate with its technological capacity and platform control (failure to proactively remove manifestly infringing LoRA models).

(iv) Allocation of the Burden of Proof

With respect to copyright claims over AI-generated images, courts have clarified the rules on the allocation of the burden of proof: a party claiming originality in AI-generated content must provide original records and screenshots of the creative ideas, input instructions, parameter settings, modification processes, and the like, to prove that their "individualized choices and arrangements" satisfy the originality requirement. Where such records of the creative process are not provided, courts will not uphold the claim. This rule reasonably allocates the evidentiary burden to the party claiming rights, easing the court's fact-finding task.

4. Comparative Analysis: Chinese, U.S., and EU Courts

The three adjudicative logics developed by Chinese courts in handling AI-related cases did not emerge in an institutional vacuum. The United States and the European Union, as the principal jurisdictions in global AI governance, have offered different institutional responses to similar disputes. The following comparison proceeds along the three adjudicative logics of Chinese courts: first comparing the consensus and divergent paths among China, the U.S., and the EU on the "human author" question; second, comparing the different trade-offs among the three in balancing innovation incentives and rights protection; and third, comparing differences in the institutional division of responsibilities among the three in judicial development of the law. This comparison provides a frame of reference for the functional role of Chinese courts in AI governance.

4.1 Anthropocentrism: Shared Baseline, Divergent Paths

"Anthropocentrism" is the first logic of Chinese courts in handling AI cases and is also a basic position shared by Chinese, U.S., and EU courts when addressing disputes over AI-generated outputs. However, beneath this consensus, the implementation paths of the various jurisdictions differ significantly: Chinese courts bring AI-generated outputs within copyright protection through flexible legal interpretation; U.S. courts adhere to strict textualism and reject any extension; and EU courts, taking "the author's own intellectual creation" as the standard, seek a balance between principle and flexibility.

4.1.1 The U.S. Thaler Case:[13] Pure AI-Generated outputs entirely excluded

Thaler v. Perlmutter is the most representative precedent regarding AI copyright in the United States. In this case, the applicant, Stephen Thaler, listed his AI system, the "Creativity Machine," as the sole author of a work and himself merely as its owner, and applied to the U.S. Copyright Office to register a visual artwork titled "A Recent Entrance to Paradise". The Copyright Office

[13] See *Thaler v. Perlmutter*, 130 F.4th 1039 (D.C. Cir. 2025), https://law.justia.com/cases/federal/appellate-courts/cadc/23-5233/23-5233-2025-03-18.html

refused registration on the ground that "the work was autonomously generated by a machine and lacked a human author." Thaler's two requests for reconsideration were denied, and he subsequently filed suit in court.

The U.S. Court of Appeals for the District of Columbia Circuit issued its decision on March 18, 2025, affirming the Copyright Office's determination. The D.C. Circuit judge stated clearly in the opinion "The Copyright Act requires that all eligible works must first be created by a human being." The court supported this conclusion through a systematic interpretation of multiple provisions of the Copyright Act. The copyright term is calculated as "the life of the author plus 70 years," but a machine has no "life"; copyright can be inherited, but a machine has no "surviving spouse or heirs"; copyright transfer requires a "signature," but a machine cannot provide a signature; and authors of unpublished works are protected without regard to "nationality or domicile," but a machine has no "domicile" or "nationality." The core thesis was that "purely AI-generated works do not enjoy copyright protection under current law."

The Thaler case did not entirely reject AI's supporting role in creation. The court explicitly stated: "The human authorship requirement does not prohibit copyright registration of works created with the assistance of artificial intelligence; the rule merely requires that the author of the work be a human being, i.e., is, the person who created, operated, or used the artificial intelligence, not the machine itself." Accordingly, under U.S. law, AI can serve as a tool for creation but cannot be the subject of creation.

Thaler petitioned the U.S. Supreme Court for a writ of certiorari, but the Supreme Court denied review on March 2, 2026, leaving the D.C. Circuit's decision as the final authority.

4.1.2 The EU: An Open Path with "The Author's Own Intellectual Creation" as the Standard

Although the Court of Justice of the European Union (CJEU) has not specifically ruled on AI-generated outputs, it has established a uniform originality standard through prior precedents, a standard that likewise presupposes a "human author." The 2009 case of *Infopaq International A/S v. Danske Dagblades Forening* is a landmark CJEU decision in the copyright domain.[14] In this case, the CJEU established that copyright protection applies only to original works, and originality must reflect "the author's own intellectual creation." Europe currently anchors copyright in human creativity, which not only protects the moral and cultural values deeply rooted in European legal traditions but also reflects the view that "free and creative choices" are the result of consciousness. On this basis, wholly AI-generated outputs with minimal or no human intervention are unlikely to obtain copyright protection, and AI tools themselves certainly cannot hold copyright in any work (European Parliament 2025), reflecting the EU's legislative orientation of protecting traditional copyright industries.

In 2025, the CJEU received its first request for a preliminary ruling on generative AI copyright issues (Case C-250/25), concerning whether Google's Gemini chatbot infringed the rights of news publishers. A decision in this case is expected by the end of 2026 and may further clarify the CJEU's position on AI copyright issues.[15] Meanwhile, the Munich I Regional Court in Germany has taken an early step in *GEMA v. OpenAI*,[16] finding that AI training conduct constitutes copyright infringement, which to some extent foreshadows the possible direction of the CJEU's adjudication.

4.1.3 Summary

China, the U.S., and the EU on the "human author" share the baseline consensus that "copyright protection presupposes human creation," but their implementation paths differ markedly. U.S. courts, adopting a strongly textualist approach, strictly adhere to statutory law and reject any judicial extension, i.e., "the author must be a human being" is a passive, closed conclusion. The CJEU anchors originality in "the author's own intellectual creation," providing a uniform standard as an interpretive framework for member states, though the standard itself still leaves room for case-by-case judgment. Chinese courts, while adhering to the human author premise, provide a pathway to protection for AI-generated outputs through application by analogy of the legal-person work regime. The differences among the three paths are, an expression of the deeper question of "who supplies the rules": the U.S. leaves it to Congress, the EU relies on legislation in coordination with courts, and China has the courts explore first. This divergence will be further developed in the comparison of "judicial development of the law" in Section 4.3 below.

4.2 Balancing Innovation Incentives and Rights Protection

4.2.1 The United States high threshold for Fair Use and a low threshold for Platform Liability

U.S. courts strictly protect human creation through copyright eligibility requirements, while showing tolerance toward AI training under fair use and granting broad platform immunity through Section 230, creating a situation of extreme tolerance on the technological innovation side but inadequate remedies on the rights protection side.

Thaler v. Perlmutter exemplifies the U.S. courts' strict adherence to the "human author" principle. The D.C. Circuit, through systematic interpretation of the Copyright Act, concluded that "copyright protection requires human authorship." The U.S. Copyright Office further confirmed in its 2025 report: "Prompts do not appear to adequately determine the expressive elements produced, or control how the system translates them into an output." This indicates that prompts alone do not provide sufficient human control (U.S. Copyright Office 2025).

Regarding fair use of AI training data, U.S. courts are deeply divided. In *Bartz v. Anthropic* (2025),[17] the court found that using copyrighted books to train the large language model Claude constituted fair use, on the ground that "training an LLM is a highly transformative use", the model learns language patterns rather than reproducing the original works. The court emphasized that in that case the infringing outputs were not made available to the public, so the market substitution effect was weak. In *Kadrey*

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14 See *Infopaq International A/S v. Danske Dagblades Forening*, Case C-5/08, ECLI:EU:C:2009:465 (CJEU, July 16, 2009), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62008CJ0005

15 See *Like Company v. Google Ireland Limited*, Case C-250/25, request for a preliminary ruling from the Budapest Környéki Törvényszék (Hungary), lodged April 3, 2025, OJ C/2025/3039, https://eur-lex.europa.eu/eli/C/2025/3039/oj

16 See *GEMA v. OpenAI*, Munich I Regional Court, Case No. 42 O 14139/24, Judgment of November 11, 2025.

17 See *Bartz v. Anthropic PBC*, 787 F. Supp. 3d 1007 (N.D. Cal. 2025), https://www.leagle.com/decision/infdco20250625c57

v. Meta (2025), the court adopted a similar position, finding that[18] using pirated books to train the LLaMA model constituted fair use.

However, in *Thomson Reuters v. Ross Intelligence* (2025),[19] the court reached the opposite conclusion. That case involved the use of Westlaw headnotes to train a legal AI research tool. The court found that this did not constitute fair use, because the defendant's use was commercial in nature and non-transformative (directly competing in a core market), and affected the potential market for AI training data. Generative AI (the Bartz case) was found to be highly transformative, whereas non-generative AI (the Thomson Reuters case) was found to lack transformativeness.

This internal divergence reflects the difficult balancing act U.S. courts face between "innovation incentives" and "copyright protection." The four-factor fair use test in U.S. copyright law leads to divergent judgments and uncertainty about the applicable rules. At present, generative AI training is more likely to be found to constitute fair use, signaling a more favorable stance toward the AI industry.

For platform liability, Section 230 of the U.S. Communications Decency Act grants online platforms broad immunity from infringement liability. Platforms generally do not bear liability for user-generated content, even where such content is algorithmically recommended.[20] *Patterson v. Meta* confirmed this highly lenient immunity position. In that case, the plaintiff argued that Meta, through its platform's built-in AI image generation tools and algorithmic recommendation systems, had "facilitated" the generation and dissemination of user-generated infringing content and therefore should not enjoy Section 230 immunity. However, the New York State Supreme Court, Appellate Division, held that Meta was not the "information content provider" of the infringing content. Although Meta provided AI tools and algorithmic systems, the content itself was still provided by users; algorithmic recommendation of user-generated content did not alter the platform's neutral status. The court specifically noted that the AI tools themselves did not predetermine the content users would output, and the alleged infringing choices "remained the acts of the users"; Meta had not participated in creating the allegedly infringing material.[21]

The logical core of this decision is: technology neutrality = platform neutrality = Section 230 immunity. The design and provision of AI tools do not themselves constitute substantive participation in users' infringing acts, and platforms have no obligation to proactively filter or prevent users from using AI tools to generate potentially infringing content.

4.2.2 The Courts Enforcement of Legislation's strict standards in EU

The EU's value orientation exhibits a distinctive "human rights-based" character, with "stability" as its core concept, achieving the value objectives of AI governance through a legislation-led pathway. This is partly reflected in the development of relevant EU legislation.

The Ethics Guidelines for Trustworthy AI, published by the European Commission in April 2019, established three basic requirements of lawfulness, ethicality, and robustness that trustworthy AI should satisfy. The Ethics Guidelines were relatively weak in procedural arrangements and were facing a period of "transition from principles to processes"; if this transition could not be completed, the Ethics Guidelines risked being reduced to an "ethics washing" tool for industry (Larsson 2020).

Thus, in February 2020, the European Commission published the White Paper on Artificial Intelligence, adopting a risk-based, sector-specific regulatory approach that distinguished high-risk AI applications from other applications, with building "an ecosystem of trust" as the core policy objective. In terms of value orientation, the White Paper emphasized: "Given the major impact that AI can have on our society and the need to build trust, it is vital that European AI is grounded in our values and fundamental rights such as human dignity and privacy protection."[22] This formulation clearly reflects the EU's position of placing the protection of fundamental rights at the core of the AI governance value system.

The EU Artificial Intelligence Act, which took effect in August 2024, further institutionalized the above value orientation. The Act adopted a "risk-based approach," imposing strict ex ante compliance obligations on high-risk AI systems, including risk assessment, data governance, transparency requirements, and human oversight.[23]

In the field of tort liability, the EU's value orientation likewise reflects a high degree of emphasis on rights protection. In September 2022, the European Commission proposed the draft AI Liability Directive[24] and the revised Product Liability Directive.[25] The former introduces disclosure obligations and a rebuttable presumption of causation, and the latter explicitly includes software within the scope of "products." These measures are aimed at addressing the evidentiary difficulties caused by the "black box" characteristics of AI systems — victims "face an increasingly daunting task in attempting to identify and prove that an AI system was the source of their harm" — and the EU's legislative response reflects a value orientation of "protecting victims from facing a

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18 See *Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026 (N.D. Cal. 2025), https://www.govinfo.gov/app/details/USCOURTS-cand-3_23-cv-03417

19 See *Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence Inc.*, 765 F. Supp. 3d 382 (D. Del. 2025), https://www.ded.uscourts.gov/sites/ded/files/opinions/20-613_5.pdf

20 See Communications Decency Act, 47 U.S.C. § 230, https://www.law.cornell.edu/uscode/text/47/230

21 See *Patterson v. Meta Platforms, Inc.*, 239 N.Y.S.3d 726 (N.Y. App. Div. 2025), 2025 NY Slip Op 04447, https://www.nycourts.gov/reporter/3dseries/2025/2025_04447.htm

22 See European Commission, *White Paper on Artificial Intelligence—A European Approach to Excellence and Trust*, February 2020, 3, https://commission.europa.eu/system/files/2020-02/commission-white-paper-artificial-intelligence-feb2020_en.pdf

23 See Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 13, 2024 (Artificial Intelligence Act), chap. III, sec. 2, arts. 9–15, https://eur-lex.europa.eu/eli/reg/2024/1689/oj

24 See European Commission, *Proposal for a Directive on Adapting Non-Contractual Civil Liability Rules to Artificial Intelligence*, COM(2022) 496 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0496

25 See European Commission, *Proposal for a Directive on Liability for Defective Products*, COM(2022) 495 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0495

lower level of protection in accidents involving AI systems than in the case of traditional products" (De Bruyne and Ooms 2025). However, the relatively high preset standards on the rights protection side imply that the space for technological innovation is correspondingly constrained. The AI Liability Directive made little substantive progress toward implementation among EU member states and was withdrawn in 2025,[26] though this withdrawal met with strong opposition from various quarters.

4.2.3 Summary

In balancing innovation incentives and rights protection, China, the U.S., and the EU exhibit three different institutional choices. The U.S. leans toward "innovation priority," providing a relaxed environment for technological development through flexible fair use determinations and broad platform liability immunity, at the cost of uncertainty in the remedies available to rights holders. The EU leans toward "protection priority," setting strict standards in advance through legislation, with courts enforcing high protection thresholds, at the cost of potentially constraining technological innovation. Chinese courts' "two-stage assessment" attempts to find a dynamic equilibrium between these two orientations: the tolerance of the first stage preserves a "trial-and-error space" for innovation, while the strictness of the second stage provides a "backstop guarantee" for rights and interests. Which of the three paths is superior remains an open question, but the Chinese path, in its coordination between rule predictability and the intensity of protection, at least provides an approach worthy of attention at the institutional level.

4.3 Judicial Development of the Law

4.3.1 The United States case-by-case Balancing

U.S. courts' judicial development of the law in AI cases exhibits a distinctly case-by-case character, with courts avoid creating broad rules.

(1) The Four-Factor Fair Use Framework

Section 107 of the U.S. Copyright Act sets forth four factors for consideration in fair use analysis: the purpose and character of the use (including whether it is transformative), the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use upon the potential market for or value of the copyrighted work.[27] On this basis, U.S. courts have further developed the criterion of "transformative use": if the original work is used for a new and different purpose, rather than merely superseding the original work, the first factor tends to favor fair use. The higher the degree of transformativeness, the less important other factors (particularly commercial nature) become. This framework is highly dependent on case-by-case determination, affording courts substantial discretion.

In AI training data copyright infringement cases, U.S. courts have conducted case-by-case balancing through this framework, leading to highly divergent outcomes. In *Bartz v. Anthropic*, the court found fair use, reasoning that the first factor (purpose and character) strongly favored a finding that training an LLM was a "highly transformative use" — the model learned language patterns, not the original works , and that the fourth factor (market effect) was also favorable because infringing outputs were not provided to the public, making the market substitution effect weak. In *Kadrey v. Meta*, the court took a similar position. However, in *Thomson Reuters v. Ross Intelligence*, the court found no fair use, reasoning that the defendant's use was commercial and non-transformative, directly competing in a core market, and that the fourth factor was similarly unfavorable because it affected the potential market for AI training data. The diametrically opposite conclusions in the two cases stem from the highly subjective nature of the "transformative use" determination under the first factor. Thus, the U.S. courts' "case-by-case balancing" approach, while ensuring adjudicative flexibility, also makes legal rules less predictable. Industry participants cannot readily predict ex ante whether their conduct constitutes fair use and must rely on case-by-case litigation, which to some extent increases compliance costs and legal uncertainty.

(2) A Methodological Tendency to Avoid Creating General Rules

U.S. courts in the Thaler case explicitly declined to extend the concept of "author" to non-human entities, citing fidelity to the statutory text. The D.C. Circuit, through systematic interpretation of multiple provisions of the Copyright Act, concluded that "the author must be a human being" and declined to alter this rule through judicial decision.[28] This formulation is a classic expression of U.S. judicial restraint, leaving the power to create rules to Congress rather than assuming it through the courts.

4.3.2 The European Union: Unified Interpretation Under EU Law and the CJEU

(1) Unified Interpretation of Abstract Standards

The CJEU established the originality standard that "a work must reflect the author's own intellectual creation" in the Infopaq case (C-5/08) and has reaffirmed it in multiple subsequent decisions, requiring that a work reflect the author's "personal touch" and "personality." This standard, while not directly answering the copyright question for AI-generated outputs, provides a unified interpretive framework for member state courts, wholly AI-generated works, lacking human intellectual creation, should not receive copyright protection.

(2) Unification Through the Preliminary Ruling Mechanism

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26 See Digital Policy Alert, "European Commission Officially Withdrew Proposal for a Directive on Adapting Non-Contractual Civil Liability Rules to Artificial Intelligence," https://digitalpolicyalert.org/event/35794-european-commission-officially-withdrew-proposal-for-a-directive-on-adapting-non-contractual-civil-liability-rules-to-artificial-intelligence (accessed April 30, 2026).

27 See Copyright Act, 17 U.S.C. § 107, https://www.law.cornell.edu/uscode/text/17/107

28 *Thaler v. Perlmutter*, 130 F.4th 1039 (D.C. Cir. 2025) ("This court's job, by contrast, 'is to apply the statute as it is written,' not to wade into technologically uncharted copyright waters and try to decide what 'might accord with good policy.'"), https://law.justia.com/cases/federal/appellate-courts/cadc/23-5233/23-5233-2025-03-18.html

The CJEU's preliminary ruling procedure is the core instrument for achieving uniform interpretation of EU law. When a member state court has doubts about the interpretation of EU law, it may request a preliminary ruling from the CJEU.[29] The CJEU is currently hearing Case C-250/25 (Like *Company v. Google Ireland*), concerning whether Google's Gemini chatbot infringed the rights of news publishers. A decision in this case is expected by the end of 2026 and will further clarify the CJEU's position on generative AI copyright issues. This mechanism ensures consistency in the treatment of the same issue across the EU, preventing the fragmentation of rules among member states.

(3) Legislation-Led Rule Creation

Unlike U.S. courts, which leave rule creation to Congress, and Chinese courts, which proactively supply rules through judicial development of the law, the EU tends to regard the speed of social change and AI development as making future trajectories difficult to predict. Although AI ethics retains considerable value alongside law, formal procedural codification is considered necessary to put principles into practice (Larsson 2020). The Artificial Intelligence Act (effective August 2024) is the world's first comprehensive AI legislation, imposing strict obligations on high-risk AI systems. In the copyright area, the Act requires providers of general-purpose AI models to establish policies complying with EU copyright law but does not directly regulate the copyrightability of AI-generated outputs. This indicates that the EU chooses to fill the regulatory gaps in AI governance through legislation rather than adjudication, in contrast with China's "judiciary-first" model.

5. The Functional Role of Chinese Courts in AI Governance

The foregoing comparison reveals a core proposition. During the "institutional window period" when legislation has not yet fully responded to technological change, courts in different jurisdictions have adopted different roles. U.S. courts lean toward judicial restraint, leaving the power to create rules to Congress and focusing on resolving individual disputes, adhering to an "innovation-first orientation" and striving to maintain national AI innovation capacity, ensuring the smooth advancement of U.S. AI innovation and the public acceptability of its applications, keeping technological innovation and the public acceptability of applications in balance. EU courts operate within the legislative framework, maintaining the stability of the legal order through uniform interpretation, with "ethics first" as their defining emphasis, enhancing the EU's influence and leadership in the global AI field by constructing comprehensive ethical principles and legal systems, compensating for its deficiencies in AI innovation and application (Wang, Li, and Gao 2024). Chinese courts, by contrast, when the legislature is silent, not only resolve individual disputes but proactively assume the function of supplying rules, shaping the governance order through adjudicative logic.

Chinese courts perform unique functions in AI governance that transcend traditional judicial functions. The following four functions are linked to the three adjudicative logics revealed above: anthropocentrism anchors the foundations of the rule of law, the two-stage assessment achieves dynamic equilibrium, judicial development of the law supplies rules, and all three together perform the function of risk control.

5.1 Four Core Functions in Governance

The three adjudicative logics revealed above (anthropocentrism, the two-stage liability assessment, and judicial development of the law) are not isolated technical operations but collectively point to four core functions played by Chinese courts in AI governance. Through comparison with U.S. and EU courts, the institutional logic and value orientation of these functions will become clearer.

5.1.1 Upholding Human Legal Subjecthood: Anchoring the Rule of Law amid Technological Disruption

Confronted with the "subjectivity shock" triggered by AI, Chinese courts have, through a series of decisions, clearly and firmly established the unshakable status of the "human subject". AI is a tool, and humans are the sole bearers of legal responsibility. No matter how closely an AI's output resembles human conduct in form, so long as the generation process lacked substantive human intervention, it falls outside the system of legal protection; conversely, technological intervention does not sever the legal connection between humans and the consequences of their actions.

This position is shared by U.S. and EU courts, but the implementation paths and value orientations differ. U.S. courts, in the Thaler case, likewise insisted that "the Copyright Act requires human authorship," but their reasoning was highly textualist, wholly dependent on the specific provisions of the U.S. Copyright Act, and declined to adjust the rules through judicial extension. The CJEU, while not having ruled directly on AI-generated outputs, established the "author's own intellectual creation" standard in the Infopaq case. One might think judicial practice denies protection to AI-generated works, but in reality, it takes human intellectual activity as the logical starting point for copyright protection, placing the core inquiry on whether the work satisfies the originality condition and reflects the author's personality through free and creative choices (Gaffar and Albarashdi 2025). Chinese courts, in their series of decisions in the copyright and personality rights domains, have consistently used "human intellectual input" and "identifiability" as core standards, positioning AI as a tool rather than a subject. The Feilin case established the principle that "creation by a natural person is a necessary condition for a work"; the Dreamwriter case brought AI-generated outputs within protection through the legal-person work regime. The Yin case brought AI-synthesized voices within the scope of natural persons' voice rights through the "identifiability" standard; and the He case extended personality rights protection to AI virtual personas. These decisions share a common approach of no matter how closely AI outputs resemble human conduct in form, the court consistently seeks the anchor point of the "human" within the legal relationship.

The repeated application of this logic has produced three systemic effects. Firstly, it stabilizes industry expectations. AI developers and operators can be clear that investing in the development and application of AI tools will not expose them to unpredictable legal risks due to uncertainty about legal personality, because risk always falls on "persons" rather than "systems," making

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[29] See Consolidated Version of the Treaty on the Functioning of the European Union, art. 267, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016ME/TXT.

compliance costs predictable. Secondly, it guides the direction of technological R&D: through the "degree of human intellectual input" standard, courts have effectively sent a signal to industry that AI's value lies in augmenting human creation, not replacing it. This guides enterprises to direct R&D resources toward "enhancing human capabilities" rather than "simulating human subjects." Thirdly, it prevents the evasion of responsibility: as technical systems become increasingly autonomous, if the law were to treat AI as a "subject" in some sense, the moral hazard of "shifting responsibility to the machine" could arise. Courts' insistence on the human subject fundamentally blocks this escape route.

Accordingly, "upholding human legal subjecthood" is not merely the courts' adjudicative stance and it performs a value-anchoring function. Against the backdrop of rapid technological evolution and increasingly blurred human-machine boundaries, courts, through their legal judgments in every AI-related case, repeatedly affirm and reinforce a fundamental proposition that the object of legal protection is always the human being, and the bearer of responsibility is always the human being. Chinese courts' "anthropocentrism" is not only a legal judgment but also a value declaration: the ultimate purpose of technological development is always human well-being. This is in line with the "human-centered" principle emphasized in China's Ethical Norms for the New Generation of Artificial Intelligence[30] and is highly consistent with China's advocacy for "developing responsible artificial intelligence" in global AI governance.

5.1.2 Balancing Technological Innovation and Concrete Rights

Excessive protection stifles innovation, while excessive laissez-faire harms rights and interests. The dilemma of global AI governance is, a struggle between a "regulatory vacuum" and "power restructuring" (Fang and Song 2025). Chinese courts have achieved a dynamic balance between the two through the "two-stage assessment" framework. At the first stage (technology development and provision), courts exhibit tolerance for innovation, bringing the "learning purpose" of training data within the boundaries of fair use and affirming the value of AI-assisted creation. At the second stage (where specific use is unlawful), courts exhibit a resolute protective stance, strictly holding accountable platforms that fail to exercise due care and individuals who abuse technology. Technology may be neutral, but conduct cannot escape accountability.

The repeated application of the two-stage assessment has produced two key systemic effects. It demarcates a "trial-and-error space" for innovation. The court's tolerance of learning-oriented use of training data at the first stage effectively provides AI enterprises with a legal "safe harbor" for foundation model R&D. Enterprises can confidently invest in data training without constant fear of infringement. This judicial attitude functionally resembles the U.S. fair use regime but is simpler and more predictable, not requiring case-by-case four-factor analysis. Secondly, it reserves a "backstop tool" for rights protection. The court's strict accountability for specific infringing conduct at the second stage sets a clear legal bottom line at the boundary of the "trial-and-error space" , technology neutrality does not equal conduct immunity, and platforms' duty of care must match their profit models. This is precisely the core message of the Hangzhou AI Platform Case: you may develop a platform, but you may not turn a blind eye to infringement on the platform. The core advantage of this balancing model is predictability. Industry participants can clearly understand that developing foundation models and investing in data training are not in themselves unlawful, but generating infringing content in a specific application or failing to discharge the duty of care will attract legal liability. This mechanism both prevents a "chilling effect" on technological innovation and preserves adequate remedial channels for those whose rights have been harmed, reflecting China's AI governance policy orientation of "equal emphasis on development and regulation."

The governance function of the two-stage assessment lies in maintaining dynamic equilibrium. It is not a static binary choice between "tolerance or strictness" but an elastic framework that can be dynamically adjusted as technology develops and industries mature. When technology is still in its early stages and risk types are not yet clear, the tolerance of the first stage predominates, leaving room for innovation; when technology applications become widespread and infringement patterns become clear, the strict accountability of the second stage begins to take effect, preventing technological abuse. This function directly addresses the problem of legal lag. The legislative amendment cycle is long and procedurally complex, making it difficult to keep pace with the speed of technological iteration. The flexibility of the two-stage assessment lies in its continuous adjustment by courts in individual cases, rather than preset once and for all by legislation. Compared with the high degree of uncertainty in U.S. courts' fair use determinations due to substantial variation between cases, Chinese courts' two-stage assessment offers greater predictability; compared with the rigidity of the EU's preset strict standards under the Artificial Intelligence Act, Chinese courts' two-stage assessment offers greater flexibility. It is precisely in this dynamic equilibrium, "predictable but not rigid, flexible but not arbitrary", that courts perform a governance function that neither the legislature nor the executive can readily replace.

5.1.3 Creations of rules and Judicial Development of the Law

U.S. courts leave the power to create rules to Congress. As the court in Thaler clearly stated: "This court's job, by contrast, 'is to apply the statute as it is written,' not to wade into technologically uncharted copyright waters". This judicial restraint leaves the regulatory gaps in AI governance to be filled by legislation, more clearly displaying the characteristics of "business-friendly" and "weak" governance. EU courts achieve uniform legal interpretation through the preliminary ruling mechanism but likewise do not proactively create rules, relying more on legislative instruments such as the AI Act to provide the framework, forming a model of "strict governance" characterized by top-down vertical governance with the GDPR at the apex (Wang, Li, and Gao 2024). Chinese courts exhibit an entirely different institutional posture. When the legislature is silent, the judiciary does not passively wait but proactively supplies rules through techniques of judicial development of the law. The Yin case applied likeness rights rules by reference to protect AI voices; the Dreamwriter case applied the legal-person work regime by analogy to protect AI-generated outputs; the Alibaba case applied the general clause to regulate AI-generated false information. It demonstrates that Chinese courts are willing to assume the role of "rule pioneers."

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[30] See Ministry of Science and Technology of the People's Republic of China, *Ethical Norms for the New Generation of Artificial Intelligence* (2021), art. 3, https://www.ncsti.gov.cn/kjdt/ztbd/gjjcyfw/rengongzhineng/rengongzhinengzczc/202109/t20210926_45232.html.

Against the backdrop of dedicated AI legislation still being under development and existing law being difficult to apply directly to emerging disputes, Chinese courts have assumed the role of "rule suppliers" through four techniques of judicial development of the law. These are application by reference, application by analogy, application of general clauses, and the creation of adjudicative standards. When the legislature is silent, the judiciary assumes the role of "pioneer." The indispensable nature of this function is particularly apparent in the Chinese institutional context. China's legislative process dictates that dedicated AI legislation cannot be accomplished overnight, given that technological pathways have not yet stabilized, social consensus has not yet formed, and the international competitive landscape is still evolving. If one were to wait for legislation to be completed before responding to social needs, an "institutional vacuum" could emerge over several years or even longer. Courts have filled this vacuum through individual case adjudication and judicial development of the law, preventing AI governance from descending into governance without legal constraints in the absence of legislation.

This judicial activism is rooted in the institutional logic with Chinese characteristics. In China's rule-of-law practice, the judiciary is not only a dispute resolution mechanism but also an important part of social governance. Through the case guidance system and the mechanism for publishing typical cases, courts systematize and regularize individual case experience, provide adjudicative guidance for courts nationwide, accumulate institutional experience for subsequent legislation, and adapt to the characteristics of rapid AI technological iteration. The Opinions on Properly Adjudicating Disputes Involving Artificial Intelligence in Accordance with Law, currently being drafted by the Supreme People's Court, mark the formal commencement of this process of consolidation. This approach both responds to the urgent demand for rules triggered by technological iteration and avoids the institutional mismatch that premature legislation might bring, it is an institutional innovation pathway with Chinese characteristics.

5.1.4 Potential Risks of AI: a Safety Valve delimiting Legal bottom lines

Anthropocentrism, the two-stage assessment, and judicial development of the law do not merely serve the recognition of rights and allocation of liability in individual cases; they objectively and collectively perform a "risk demarcation" function. The anthropocentric logic excludes the possibility of treating AI as a responsible subject, keeping responsibility attached to "persons" and preventing the risk of "responsibility dissipation." The second stage of the two-stage assessment (strict accountability), from the Yu case to the Fuzhou E-Commerce Company case, consistently sends a signal: using AI to carry out illegal acts is subject to the same accountability as traditional means, and may even entail heightened duties of care due to technological capability. The methods of judicial development of the law (application by reference, application by analogy, general clauses) provide the legal basis for regulating novel risk-creating conduct.

The above logic in practice has produced risk-control effects in three respects. First, it delimits the boundaries of lawful technology use. The rule established in the Yu case that "facial information requires separate consent," the rule established in the Yin case that "AI-synthesized voices require the rights holder's permission," and the rule established in the Lin case on "the burden of proving originality of AI-generated outputs", together establish a boundary against encroachment on others' lawful rights and interests. Second, it prevents the spread of risky practices: in the Yu case, the procuratorial authorities brought a civil public interest lawsuit, and the court ordered compensation and a public apology. This judgment communicated to society that AI face-swapping is not a "technological game" but a high-risk activity that may simultaneously trigger civil public interest litigation and criminal prosecution. The "deterrent effect" of such adjudication is unmatched by risk assessment reports or industry guidelines. Third, it provides judicial benchmarks for administrative enforcement. The infringement determination standards and duty-of-care boundaries established by courts in their judgments effectively provide usable enforcement benchmarks for administrative enforcement agencies such as cyberspace affairs, public security, and market regulation authorities, reducing legal uncertainty in administrative oversight.

5.2 Pros and Cons of Court-Centered Governance

Court-centered governance clearly reflects the "strong coordination" characteristic of China's governance model. The China model, under the guidance of national strategy (quoted in Cai, Wang, and Yu 2026), the coordination of development and security, the adoption of a gradual pathway of policy and legislation advancing in tandem, features rapid responsiveness, and flexible adaptability. In terms of rapid response, from the Feilin case (2019) to the Yin case (2024), courts have promptly rendered decisions after emerging disputes arise, filling institutional vacuums, something legislative procedures cannot match. For flexible adaptation, courts fully consider the circumstances of individual cases and avoid "one-size-fits-all" approaches. The balance between training conduct and the strict requirements for platforms' duty of care in the Hangzhou AI Platform Case precisely demonstrates courts' capacity to finely calibrate the intensity of protection. The case guidance system provides institutional safeguards for court-centered governance. Decisions included in the case database form references and guidance for courts nationwide, and combined with judges' independent judgment, partly address the fragmentation of individual adjudication and help remedy inconsistent legal application and widely divergent outcomes in such cases in China (Zhang 2026).

However, court-centered governance faces three constraints. First, the fragmentation dilemma. Court-centered governance is, in essence, "ex post responsive" individual case adjudication, making systematic institutional design difficult. Different courts may handle the same issue differently, increasing legal uncertainty. Second, the absence of substantive law. China has not yet enacted dedicated AI legislation. Courts can only rely on dispersed norms from the Copyright Law, the Civil Code, the Anti-Unfair Competition Law, and other statutes to address AI-related cases. These laws were not drafted with full consideration of the special characteristics of AI, and their application inevitably involves "cutting the foot to fit the shoe." The court-centered governance of AI must ultimately be grounded in substantive law, to strengthen technological control and legal certainty and to improve risk regulation. By contrast, the EU has established a systemic framework through the AI Act, and the U.S. is also advancing AI legislation at the federal level; the absence of substantive legal norms constrains Chinese courts' governance function due to insufficient institutional supply (Shen and Wu 2026). Third, the problem of the boundaries of judicial development of the law. When judicial development of the law exceeds the possible semantic scope of the legal text, it becomes "judge-made law." Judges may not pursue justice in an individual case at the expense of the legal order when developing the law. Judicial development of the law must give priority to ensuring that it remains within the overall framework of the legal order (Zhao 2024). Particularly on issues involving

major policy choices, such as AI legal personality, and the boundaries of fair use of training data, courts' capacity for law development has inherent limits, and the legislature must ultimately make the institutional determination.

6. Conclusion

Confronted with the legal challenges brought by the rapid advancement of AI, and in the absence of dedicated AI legislation, Chinese courts have, through three adjudicative logics of "anthropocentrism," "the two-stage liability assessment," and "judicial development of the law", played an irreplaceable role in AI governance. From the copyright domain's "creation by a natural person is a necessary condition for a work," to the personality rights domain's "AI voices and virtual personas belong to natural persons," to the criminal liability domain's "those who use AI to commit crimes bear liability," Chinese courts have consistently placed the "human being" at the core of legal protection. Through the "two-stage assessment" framework, courts have achieved a dynamic balance between incentivizing technological innovation and protecting concrete rights; through techniques of judicial development of the law such as application by reference, application by analogy, and application of general clauses, courts have proactively supplied rules when the legislature has remained silent, providing the AI industry with predictable behavioral boundaries. Compared with U.S. courts' case-by-case balancing and judicial restraint, Chinese courts exhibit a more proactive judicial posture; compared with EU courts' model of reliance on legislative frameworks and the preliminary ruling mechanism, Chinese courts' "judiciary first, legislation to follow" path offers greater flexibility and adaptability.

From a comparative law perspective, while Chinese, U.S., and EU courts share the baseline of the "human author," they exhibit markedly different value orientations in their institutional implementation. U.S. courts, adopting a strongly textualist approach, decline to adjust legal rules through judicial extension, leaving the power to create rules to Congress. EU courts take "the author's own intellectual creation" as a uniform standard, relying more on legislative instruments such as the Artificial Intelligence Act to provide the institutional framework. Chinese courts adhere to the human subject while proactively filling regulatory gaps through judicial development of the law, achieving a fine-tuned balance between technological innovation and rights protection in individual cases. This path is neither the "passive judicial waiting" of the United States nor the "legislation-led pioneering" of the European Union; it is a realist path rooted in China's rule-of-law practice.

While court-centered governance has the advantages of rapid response and flexible adaptation, it has limitations such as fragmentation, the absence of unified substantive legal norms, and the limited boundaries of judicial development of the law. These limitations cannot be overcome by the judiciary alone; ultimately, the legislature must provide a systematic institutional response.

Perhaps the progress of AI will increasingly challenge the notion of the human subject in the future. As generative AI plays an ever-greater role in literary creation, artistic design, scientific research, and even judicial adjudication, the boundary between humans and machines will become increasingly blurred. When AI systems can, accomplish everything that was once the exclusive domain of humans, the uniqueness of "the human being" as a legal subject will be continually questioned, and previously self-evident rule-of-law presuppositions will face fundamental challenges. Whether the rule-of-law foundations of the human subject can be maintained is not only a question of legal technique but also a question of value choice bearing on the very bedrock of human civilization. The foundations of the rule of law can be maintained, not by rejecting technological progress through closure and resistance, but by establishing ethical limits and human-centered boundaries for technological development through an open commitment to the rule of law. Technologies may iterate, and algorithms may be optimized, but the human dignity, freedom, and responsibility safeguarded by the rule of law should be the value bedrock that no technological era should transcend. Chinese courts' explorations in AI governance represent an important step in this direction.

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