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THRESHOLDS FOR AUTHORSHIP AND ORIGINALITY IN AI-GENERATED AND AI-ASSISTED WORKS: A COMPARATIVE STUDY OF CHINESE AND EU COPYRIGHT CASE LAW

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Abstract: *This paper examines the intersection of originality and authorship in copyright law, focusing on the treatment of AI-generated and AI-assisted works in China and the European Union. It identifies the conceptual oscillation between the two terms and addresses it by introducing a unified analytical scaffold, the Two-Tier Matrix, distinguishing between an objective layer of originality (independent creation and minimal creativity) and a subjective layer of authorship (free and creative choices by a natural person). The analysis traces how statutory provisions, doctrinal debates, and judicial decisions in both jurisdictions can be mapped onto this two-tier structure. In China, courts and scholars emphasise the objective tier, lowering the threshold for minimal creativity while requiring demonstrable human involvement. By contrast, the EU situates protection firmly within the subjective tier, demanding discernible human creative choices as established in Court of Justice of the European Union case law such as Infopaq and Painer. The comparative framework reveals not only the different doctrinal trajectories of the two systems but also highlights their convergences and the challenges they face in regulating AI creativity. By adopting the Two-Tier Matrix, this study provides a coherent tool for evaluating emerging copyright questions and contributes to the broader academic discussion on the future governance of AI-authored works.*

Key words: *AI-generated Works; AI-assisted Works; Copyrightability; Copyright Law; Originality; Authorship; Chinese Law; EU Law*

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1. INTRODUCTION

The rise of artificial intelligence (AI) challenges the foundations of copyright law, particularly the concepts of "work," originality, and authorship. While AI-assisted creation can often be integrated into established frameworks, fully AI-generated outputs expose the limits of current statutory and doctrinal approaches. This paper examines how two leading jurisdictions, the People's Republic of China and the European Union, approach the copyright status of AI-generated and AI-assisted works. The comparison highlights the divergences in their legal thresholds and explores the implications for legal certainty.

The study pursues two goals: first, to map the legal thresholds for authorship and originality in the EU and China; and second, to assess the impact of these thresholds on legal certainty in the treatment of AI-generated and AI-assisted works. The working hypothesis is that China's user-centric approach provides a more flexible and innovation-friendly framework for AI-generated works than the EU's natural-person model,

facilitating protection for a wider range of AI-assisted outputs, while the EU's model offers greater predictability regarding the fundamental requirement of human creative choice.

Methodologically, the paper adopts a comparative doctrinal analysis, drawing on statutory provisions, case law, and scholarly commentary in both jurisdictions. This study takes into account both AI-generated and AI-assisted works when addressing the copyright and AI issue. AI-generated works are created with little to no human involvement, whereas AI-assisted works incorporate human creative decisions reinforced by technical tools. In actuality, the majority of conflicts fall within the assisted group, where current authorship and originality requirements are already applied by courts and doctrine (Gaffar and Albarashdi, 2025, p. 44). Fully AI-generated outputs, on the other hand, highlight the shortcomings of the existing legal systems and raise the question of whether more protection is required (Xiao, 2023, pp. 6-7). The paper aims to capture the entire range of human-machine creativity by looking at both groups, with the consideration that the clear doctrinal distinction will strength the comparative study and will link the theory with practical disputes.

To avoid conceptual oscillation between "originality" and "authorship," this study adopts a unified definitional scaffold, which is the Two-Tier Matrix. This matrix distinguishes between (i) the objective layer of originality, assessed through criteria such as independent creation and minimal creativity, and (ii) the subjective layer of authorship, captured by the notion of free and creative choices made by a natural person. By presenting this analytical tool at the outset, the paper ensures coherence across sections and provides a common reference point for evaluating statutory provisions, doctrine, and case law.

The Two-Tier Matrix may be illustrated as follows:

Table 1: Illustration of the Two-Tier Matrix for Originality and Authorship

Tier 1 – Independent Creation (Objective Layer)	➢ *China:* "*original intellectual achievements*" (2020 Copyright Law, Art. 3)[1] — judicial interpretation and case law commonly treat this as requiring demonstrable independent creation / human input. ➢ *EU:* "*the author's own intellectual creation*" (CJEU,[2] *Painer*, C-145/10) — emphasis on human intellectual effort.
Tier 2 – Minimal Creativity (Subjective Layer)	➢ *China:* "*the work must contain a minimum of creativity*" ((Yang, 2024). ➢ *EU:* originality interpreted as a low threshold under the formula "*the work must be the result of the author's own intellectual creation*" (CJEU, *Infopaq*, C-5/08).

The paper is structured in three main parts. The first sets out the statutory framework governing the definition of "work" in Chinese and EU copyright law. The second examines doctrinal debates that shape the interpretation of authorship and originality in the context of AI. The third turns to judicial practice, analysing case law from both jurisdictions to illustrate how courts apply these principles in practice. Together,

[1] Article 3 of the 2020 Copyright Law of the People's Republic of China uses the phrase "*original intellectual achievements*." The explicit wording "*by a natural person*" is not a literal statutory text but a common interpretive reading in Chinese doctrine and judicial practice. See Beijing High People's Court guidance and subsequent case law for how courts characterise the human-authorship requirement.

[2] The used abbreviation **CJEU** refers to Court of Justice of the European Union.

these sections provide a comprehensive view of how copyright law is adapting, or resisting adaptation, to the challenges posed by AI-generated creativity.

This article contributes to the ongoing debate on AI and copyright by adopting a comparative doctrinal approach that brings together the jurisprudence of China and the European Union. These two jurisdictions are chosen not only because of their global significance but also because they represent contrasting regulatory logics: China illustrates a pragmatic, policy-oriented model where courts have progressively lowered the originality threshold to accommodate technological change, while the EU demonstrates a formalist and case-law driven system where the threshold of originality has been carefully stabilised around the standard of "the author's own intellectual creation." By analysing how both systems interpret originality and authorship in the context of AI, the paper clarifies the trajectories of judicial interpretation and highlights their implications for the future of copyright protection.

2. STATUTORY FRAMEWORK AND THE DEFINITION OF "WORK"

2.1 China's Copyright Law

The Copyright Law of the People's Republic of China (hereinafter referred to as "**CLC**"), first enacted in 1990 and most recently amended in 2020,[3] provides the fundamentals of China's copyright system. The CLC is supplemented by the Regulations for the Implementation of the Copyright Law,[4] which function as an important interpretative instrument, and further supported by judicial guidelines issued by courts. Within this framework, the concept of "work" holds a pivotal role, as copyright subsists only in protectable works. Unlike some jurisdictions, the CLC does not provide a general statutory definition of a "work," but instead sets out in Article 3 an open-ended catalogue of categories, ranging from literary, musical, dramatic, choreographic, artistic, photographic, and cinematographic works to architectural designs, maps, models, computer software, and a residual category of "other works." The definitional gap has been bridged by Article 2 of the Implementing Regulations, which defines a "work" as an "*original intellectual achievement in the fields of literature, art, and science that can be reproduced in a tangible form*." This provision introduced cumulative requirements: originality, intellectual achievement, domain specificity (literature, art, or science), and fixation in a reproducible form. The 2020 amendments to the CLC introduced an explicit statutory definition of "works" in Article 3, describing them as "*original intellectual achievements in the fields of literature, art, and science that can be presented in a certain form*." This revision replaced the earlier requirement that works be "*reproducible in a tangible form*," signalling a legislative intention to broaden the scope of protection by reducing dependence on physical fixation. The residual category was also reformulated to encompass "*other intellectual achievements meeting the characteristics of works*," thereby opening the door to new and emerging forms of creation (Wan and Lu, 2021). Despite this broadening trend, neither the CLC nor its Implementing Regulations specifically address AI-generated content, leaving its legal status to be determined under the general requirements of originality and intellectual achievement (Dai and Jin, 2023, p.

[3] Copyright Law of the People's Republic of China of 11 November 2020, Gazette of the Standing Committee of the National People's Congress 2021, No. 1, as amended. The amendments reflect the state's effort to adapt to technological progress and international commitments while retaining a strong emphasis on human authorship.

[4] Regulations for the Implementation of the Copyright Law of the People's Republic of China. (2002). State Council of the People's Republic of China, Decree No. 359, effective September 15, 2002.

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246) and (Wang, 2023, p. 910). Chinese doctrine increasingly emphasises that the definition of "work" in the 2020 CLC, which relies on the notion of "*original intellectual achievement*," leaves open the interpretive question of whether originality requires subjective personality or can instead be assessed through objective indicators such as independent creation and minimal creativity (Han, Xinyu and Zhuobin, 2024, pp. 369-370). This orientation reflects the objective originality tier of the Two-Tier Matrix, since protection depends on demonstrating independent creation and at least a minimal degree of creativity, rather than on the author's subjective personality.

To be eligible for copyright protection under China's copyright law, a work must meet three conditions. First, it must be declared a work of authorship. Second, the CLC states that copyright is inherent in certain ''original'' works, even if they are unpublished. Originality can be further classified as "independent creation" and "creativity." Independent creation refers to the work being conceived independently, whereas creativity implies that the work exhibits spiritual exertion and mental judgment on the side of the author(s) (Hutukka, 2023, p. 1062). For copyright protection, originality refers to a work that is selected, arranged, developed, and made by the author (or collaborators) without being replicated, mimicked, or plagiarised. The author(s) must have created the work independently, without copying from another work. Third, the work must be in a palpable form of expression. The ''fixed nature'' requirement requires a work to have a certain form (Hutukka, 2023, p. 1062).[5]

2.2 EU's Copyright Law

The European Union copyright acquis represents the cumulative body of legislation, case law, and international commitments that govern copyright across member states. It is primarily built on directives such as the InfoSoc Directive (Directive 2001/29/EC, 2001), the Term Directive (Directive 2006/116/EC, 2006), the Database Directive (Directive 96/9/EC, 1996), the Computer Programs Directive (Directive 2009/24/EC, 2009), and most recently the DSM Directive (Directive (EU) 2019/790, 2019) which adapts copyright to the realities of the digital environment. As noted in the literature, while the InfoSoc Directive and later the DSM Directive address digital technologies, they remain firmly grounded in a natural-person model of authorship (Zhuk, 2024). Furthermore, while all these directives provide detailed rules on rights, duration, and scope, they stop short of offering a unified statutory definition of "work." Instead, the acquis anchors protection in the principle of originality, which appears explicitly in certain instruments (such as the Computer Programs and Database Directives) and is implied in others. This legislative choice reflects the EU's reliance on judicial interpretation, particularly by the Court of Justice of the European Union, to refine the contours of authorship and originality. As such, the statutory framework provides the foundation but not the full answer to the challenges posed by AI-generated and AI-assisted works—questions that are developed further in doctrinal debate and case law. This legislative framework is complemented by the jurisprudence of the Court of Justice of the European Union, which has clarified key notions such as originality, authorship, and communication to the public (Hugenholtz and Quintais, 2021). At the same time, the acquis is shaped by

[5] In Article 2 of the Regulations for the Implementation of Copyright Law, the phrase "a certain form" means that the work "can be reproduced in a tangible form" (Regulations for the Implementation of Copyright Law of the People's Republic of China, 2013).

international obligations under the Berne Convention,[6] the WIPO Copyright Treaty, and TRIPS, embedding EU law within the wider global intellectual property order. Together, these instruments establish a harmonised yet evolving framework that continues to confront new challenges, including the status of AI-generated and AI-assisted works (Synodinou, 2018) where, generally, the Berne Convention allows for an open model of categorisation, meaning that new forms of expression can be recognised as works as they emerge (Synodinou, 2018, p. 109).

In fact, legal scholarship has emphasised that the Court of Justice of the European Union plays a central role in shaping the concept of "work," progressively developing criteria to determine authorship and originality in the absence of legislative guidance (Rosati, 2013). Scholarly analysis of the CJEU's jurisprudence has synthesised this approach into a functional four-step test for a protected "work" under EU law (Hugenholtz and Quintais, 2021):

1. Domain Requirement: The output must be produced in a literary, scientific, or artistic domain.
2. Human Intellectual Effort: The output must reflect some level of human intellectual involvement.
3. Originality or Creativity: The output must demonstrate originality, which is defined as the "author's own intellectual creation." This implies that the creator made free and creative choices during the production process. The Court of Justice of the European Union has emphasised that originality can manifest through various creative decisions made by the human contributor at different stages of the creative process.
4. Expression: Finally, creativity must be expressed in a perceptible form. This means that there should be a clear link between the author's creative act and the resulting output. The expression does not require a high artistic merit level; it suffices that the work reflects the author's creative choices (Hugenholtz and Quintais, 2021, pp. 1200-1205).

This approach corresponds to the subjective authorship tier of the Two-Tier Matrix, where the decisive element is whether the output bears the imprint of a natural person's free and creative choices.

3. DOCTRINAL AND JUDICIAL APPROACHES TO AI-GENERATED WORKS IN CHINESE AND EU COPYRIGHT LAW

In Chinese academic debate, two main approaches emerge on whether AI-generated and AI-assisted works can be treated as copyrightable. On one side, some theories minimise the role of human authorship, even suggesting that machines and humans can co-create in a way that produces works jointly shaped by both. This view goes so far as to describe AI as participating in the act of intellectual creation, though without granting it legal personhood. On the other side, there is a much stricter position, which insists that copyright cannot exist without identifiable human input. This line of thought stresses that AI, however sophisticated, cannot replicate the kind of personalised expression that lies at the core of human creativity, and that protecting outputs without this element risks undermining the very foundations of copyright (Yang, 2024, pp. 20-21). Viewed through the lens of the Two-Tier Matrix, these debates demonstrate that Chinese

[6] World Intellectual Property Organization, Berne Convention for the Protection of Literary and Artistic Works, Paris Act of 24 July 1971, as amended by the 1979 Amendment, WIPO Collection of Laws for Electronic Access (CLEA).

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doctrine increasingly stretches the objective originality tier, accepting independent creation and minimal creativity as sufficient to establish copyrightability, even where subjective authorship is thin or indirect.

Chinese courts have moved from a restrictive to a more permissive stance on AI-generated works. Early guidance, including the 2018 trial guideline of the Beijing High People's Court and the *Feilin* decision of the Beijing Internet Court,[7] rejected copyright protection on the grounds that AI-generated content lacked human authorship. This position shifted with the 2019 *Tencent/Dreamwriter* case,[8] where the Shenzhen Nanshan District Court recognised an AI-generated financial report as a copyrightable literary work, emphasising the role of human input in shaping the output (Dai and Jin, 2023, pp. 246-248). Scholars have suggested that this development reflects several distinctive features of the Chinese approach: a broad interpretation of "human participation" that accepts preparatory input as sufficient, the lack of a strict distinction between computer-assisted and AI-generated works, and the application of an objective standard of originality. Together, these elements help explain why China has become the first jurisdiction to formally recognise AI-generated works within the framework of copyright law (Dai and Jin, 2023, p. 249).

The doctrinal approach in EU law concerning AI-generated or assisted work emphasises the importance of human creativity and involvement, establishing a framework that balances technological advancement with traditional notions of authorship and copyright protection. The analysis suggests that while the current EU copyright framework is generally adaptable to AI-assisted creation, complexities arise concerning the interpretation of authorship, originality, and the extent of human involvement (Hugenholtz and Quintais, 2021, pp. 1196-1213). Analyses of Court of Justice of the European Union case law suggest that the decisive question for AI-assisted outputs is whether human creative choices are sufficiently expressed in the final product. The principle of originality remains the cornerstone of copyright protection within European national legal systems. Without this criterion, a work cannot qualify for copyright protection, making originality the primary benchmark for determining whether "work" should be protected or excluded. Although foundational, EU Directives define originality only in relation to specific categories—namely computer programs, databases, and photographs—describing it as "*the author's own intellectual creation*." Consequently, EU law does not universally impose originality as a prerequisite for copyright protection, except in these narrowly defined instances. Nevertheless, the Court of Justice of the European Union has been instrumental in interpreting and expanding the concept of originality to address new challenges, including those presented by AI-generated works. Traditionally, the notion of an author's own intellectual creation applied only to specific categories, but the Court of Justice of the European Union has gradually extended this standard to a broader spectrum of works (Gaffar and Albarashdi, 2025, pp. 41-42). Nonetheless, some scholars argue that the rise of AI-generated works challenges the traditional definition of "author," which is typically understood as "*the person by whom the arrangements necessary for the creation of the work are undertaken*." These commentators suggest that the EU framework may need to be revisited to better accommodate the distinctive nature of AI-assisted and AI-generated outputs. A more inclusive approach could recognise individuals who contribute substantial support or input in the creation of a work, thereby broadening the scope of authorship. This

[7] Beijing Internet Court, Feilin Law Firm v. Baidu Technology Company, Judgement No. 239, 2018.
[8] Nanshan District Court in Shenzhen, Tencent Computer Company v. Yingxun Technology Company, Judgement No. 14010, 2019.

perspective acknowledges the collaborative character of contemporary creative processes and aims to foster an equitable system that rewards both human ingenuity and collaborative contributions in the production of copyrighted works (Gaffar and Albarashdi, 2025, pp. 43-44). From the standpoint of the Two-Tier Matrix, this reflects the EU's firm anchoring of protection in the subjective authorship tier, where copyrightability depends on the discernible imprint of a natural person's free and creative choices, thereby excluding outputs generated without such input.

Taken together, the doctrinal debates and the emerging case law in China and the EU reveal that the central question remains the threshold of originality and authorship in the context of AI. Both jurisdictions implicitly or explicitly require that copyrightable works reflect human intellectual input, yet they diverge in how broadly they interpret this requirement. In China, courts have been willing to treat preparatory and organisational choices as sufficient to establish human authorship, while in the EU, the standard is tied more closely to demonstrable creative expression by the author. These differences underscore that the challenges raised by AI-generated and AI-assisted outputs cannot be understood solely on the level of statutory frameworks or doctrinal debates. They must also be examined through the lens of judicial practice, where questions of originality and authorship are tested against concrete disputes. The following section therefore turns to case law in both China and the EU, in order to show how courts operationalise these thresholds in practice.

4. ORIGINALITY AND AUTHORSHIP IN COPYRIGHT CASE LAW

The comparison under the previous title suggests that, despite their differences, both Chinese and EU approaches converge on the decisive role of originality and human participation as thresholds for copyright protection. While Chinese courts have broadened the notion of "human participation," EU doctrine, as refined by the Court of Justice of the European Union, places greater emphasis on whether creative choices are expressed in the final output. Both contexts thus show that the assessment of AI-generated or assisted works ultimately turns on originality and authorship—questions that will be explored in the following section (Dai and Jin, 2023; Hugenholtz and Quintais, 2021). In China, courts and scholars increasingly favour an objective originality test, where even minimal or preparatory human input may suffice to qualify AI outputs as works (Dai and Jin, 2023). The objective originality test in China is shaped by a combination of judicial precedents and scholarly debate, emphasising the importance of human involvement in the creative process of AI-generated content. As technology advances, the legal landscape will need to adapt to ensure fair and effective copyright protection for both AI-generated and human-created works (Yang, 2024). By contrast, the EU relies on the subjective standard of the "author's own intellectual creation", demanding that the work reflect free and creative choices attributable to a human author (Hugenholtz and Quintais, 2021). This section examines how these thresholds are articulated in doctrine and case law, drawing on secondary analyses of landmark decisions in both jurisdictions, and highlights the extent to which they diverge in balancing technological innovation with the protection of human creativity.

4.1 Chinese Case Law

Framed by the Two-Tier Matrix, Chinese case law shows a trajectory from a restrictive, personality-based approach toward a more permissive, objective-originality approach: courts increasingly treat preparatory, supervisory, or organisational human

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choices as evidence of sufficient human input. The analysis of Chinese jurisprudence relies on a set of landmark cases that have become central to scholarly and judicial discussions of AI and copyright. These cases were selected because they represent turning points in the judicial interpretation of originality and authorship, and because they are consistently referenced in the academic literature as benchmarks for understanding the evolving Chinese approach. Together, they provide a coherent picture of the oscillation between restrictive and permissive standards in determining whether AI-assisted or AI-generated works can qualify for copyright protection.

In China, the originality test focuses on two main aspects: uniqueness and creativity. Uniqueness refers to the work's independent creation, while creativity involves a certain level of intellectual input (Yang, 2024, p. 27). Recent scholarship confirms that the key dispute in Chinese doctrine lies in how originality is defined, with one school adhering to a subjective, personality-based notion of authorship, and another supporting an objective test grounded in independent creation and minimal creativity (Han, Wu, and Zhu, 2024, pp. 370–372).

The application of these criteria in the context of AI-generated works has evolved significantly over the past decade, as Chinese courts have coped with balancing the statutory requirement of natural person authorship with the realities of machine-driven creativity. Initially, the Beijing High People's Court Guidelines (2018)[9] mandated that copyright protection hinges on works being created by natural persons, setting a restrictive baseline. This restrictive stance was confirmed in *Beijing Film Law Firm v. Baidu* (Beijing Film Law Firm v. Baidu Netcom Science & Technology Co. Ltd., 2019). While acknowledging that the AI-generated report involved selection and judgment, the court denied protection on the basis that authorship requires a natural person. Here, the lack of identifiable human authorship disqualified the work, even though minimal originality was arguably present (Wang, 2023). Referring to the details, we can note that this case addressed whether an analysis report generated by AI software constituted a written work. The ruling indicated that although the report was original, copyright law requires written works to be created by natural persons, reinforcing the necessity of human authorship. The case sets a precedent for future disputes where AI-generated content is involved, particularly in the realm of copyright law (Yang, 2024, p. 21).

However, an appellate decision in the Automated Video Recording case (2016 ruling overturned in 2020–21)[10] marked an early shift toward recognising minimal human contribution, broadening the scope of "human participation." In its second instance, the Beijing Intellectual Property Court, and later upheld by the Beijing High People's Court, held that an automatically recorded video screenshot could be protected as a photographic work if the human operator had made preparatory choices such as camera placement, framing, and technical settings. This ruling acknowledged that even indirect human involvement could satisfy the originality threshold (Dai and Jin, 2023).

This development came to fuller expression in the Dreamwriter Case (Shenzhen Tencent v. Shanghai Yingxun, 2019) it was concluded that the content generated by Tencent's AI, Dreamwriter, is considered a legal person's work, confirming that AI-generated content can be protected under copyright law if there is sufficient human involvement, thus shifting the threshold by allowing preparatory and supervisory human contributions to satisfy originality. Namely, the court recognised that while the AI

[9] Beijing High People's Court. (2018, April 20). *Guidelines for the trial of copyright infringement cases* [Trial guidelines]. *Beijing High People's Court*. Retrieved from https://www.lawinfochina.com/display.aspx?EncodingName=big5&id=33877&lib=law

[10] Beijing Intellectual Property Court, *Automated video screenshot copyright case* (2020, aff'd Beijing High People's Court 2021).

produced original content, the human element in the creative process was essential for copyright protection (Yang, 2024, p. 26). In the words of copyright, the Shenzhen Nanshan District Court recognised a financial report generated by Tencent's Dreamwriter software as a literary work. The court emphasised that human teams made *choices regarding data input, themes, and style*, meaning that AI was treated as a tool within a broader creative process. The court adopted an objective standard of originality, focusing on the existence of selection, judgment, and arrangement rather than personal expression and shift the threshold of originality and authorship, establishing a precedent in Chinese copyright (Dai and Jin, 2023, p. 248).

The doctrinal analyses of the previously mentioned cases note that Chinese courts, therefore, oscillate between focusing on minimal originality (independent creation + small degree of creativity) and insisting on human authorship as a statutory requirement. The *Dreamwriter* case reflects the former approach, aligning originality with human input in preparatory or supervisory stages, while *Beijing Film Law Firm v. Baidu* exemplifies the latter, where originality is not sufficient without a natural person author (Wang, 2023, pp. 903-907). This duality corresponds with what certain authors identify as the "objective originality test," in which protection is granted when some human intellectual activity can be demonstrated, but denied when the creative process is wholly automated (Zhuk, 2024, pp. 1302-1304).

The most recent development can be seen in the *AI Text-To-Picture Case* (Li v. Liu (Stable Diffusion AI-generated image case), 2023) where the Beijing Internet Court addressed originality in images generated using Stable Diffusion and therefore the complexities of AI-generated images. The court highlighted that the user's choices and arrangements during the generation process must reflect their creativity for the output to be recognised as original. For an AI-generated work to be recognised as original, it must demonstrate a minimum degree of creativity. This includes showing distinct differences from existing works through the user's intellectual input, aesthetic choices, and personalised judgments during the creation process. In the AI Text-to-Picture case, the user's selection of initial models, keywords, and settings has been crucial in determining authorship. The court recognised that these choices constitute significant intellectual contributions (Yang, 2024, p. 22). Furthermore, the court acknowledged the contributions of a human who designed prompts and made aesthetic judgments, thus granting copyright to the AI-generated graphic work (Lu, 2025, p. 88). This development aligns with the growing view in Chinese doctrine that originality should be assessed through objective external criteria, whether the work itself reflects identifiable differences and minimal creativity, rather than the creator's subjective personality (Han, Xinyu and Zhuobin, 2024, pp. 371-373).

Taken together, the case law reveals a clear developmental arc in Chinese jurisprudence. The initial restrictive stage, exemplified by *Beijing Film Law Firm v. Baidu* and reinforced by the 2018 Beijing High Court Guidelines, denied protection in the absence of natural person authorship. This was followed by a pragmatic opening, most notably in *Dreamwriter* and in appellate rulings on automated video recording, where courts began to recognise minimal originality grounded in preparatory or supervisory human input. The most recent decisions, such as *AI Text-To-Picture Case*, reflect a nuanced stage in which originality is tied to demonstrable human aesthetic judgment and intellectual direction, even when execution is machine-driven. Overall, this trajectory suggests that while Chinese courts continue to anchor authorship in the principle of natural person creation, they have progressively lowered the threshold for originality by accepting human contributions at different stages of the creative pipeline. The result is a hybrid model in which protection is extended when human input leaves an apparent

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creative imprint, but outputs generated independently by AI remain excluded from the statutory copyright framework (Wang, 2023). In terms of the Two-Tier Matrix, these developments show the gradual lowering of the threshold on the objective originality tier: Chinese courts extend protection where demonstrable human direction or selection exists, even if the AI executes the work.

4.2 EU Case Law

Framed by the Two-Tier Matrix, CJEU jurisprudence consistently anchors protection in the subjective authorship tier, emphasising that a work must bear the imprint of a natural person's free and creative choices to satisfy originality. In addressing the originality and authorship thresholds under EU copyright law, this study focuses on the jurisprudence of the Court of Justice of the European Union rather than national case law. The reason for this choice is twofold. First, EU copyright protection has been progressively harmonised, with the Court of Justice of the European Union playing a central role in defining the concept of a "work" and the standard of originality as the "author's own intellectual creation." National courts are bound to apply these interpretations, meaning that the Court of Justice of the European Union's case law provides the most authoritative and uniform benchmark across Member States (Rosati, 2023). Second, while national courts have begun to encounter disputes involving AI-generated or AI-assisted outputs, the doctrinal framework they apply ultimately derives from the principles developed by the Court of Justice of the European Union. Accordingly, a focus on the Court of Justice of the European Union's jurisprudence allows for a consistent analysis of originality and authorship thresholds.

The determination of authorship and originality in EU copyright law, as we already mentioned, has been shaped primarily by the jurisprudence of the Court of Justice of the European Union. Since the directives (mentioned in the section Statutory framework and the definition of work) themselves provide no general statutory definition of "work," the Court of Justice of the European Union's case law has progressively harmonised the threshold across Member States. Scholars consistently point out that this reliance on judicial interpretation makes the Court of Justice of the European Union (referred as the Court in the analysis of the cases elaborated in the following part) the central authority in defining when creative outputs, including those assisted by new technologies such as AI, qualify as copyright-protected works (Hugenholtz and Quintais, 2021; Rosati, 2023).

The modern line of reasoning begins with *Infopaq International A/S v. Danske Dagblades Forening* (C-5/08, 2009), where the Court articulated the now-standard test: a work is protected if it is "*the author's own intellectual creation*." This formula sets originality as the decisive threshold across the EU, grounding copyright not in effort or skill, but in the personal intellectual contribution of the author. By finding that even the reproduction of eleven words could constitute a protected work if it reflected the author's free and creative choices, the Court shifted the emphasis away from quantitative thresholds and towards qualitative assessment of intellectual input (Rosati, 2023, pp. 89-91). Scholars have noted that this test set a deliberately low bar for protection, embedding flexibility into the acquis while reaffirming the indispensability of human creativity (Lu, 2025).

The standard was then clarified in *Painer v. Standard Verlags GmbH* (C-145/10, 2011), which emphasised that originality results from the author's free and creative choices. Even in technically constrained contexts, such as portrait photography, the Court emphasised that the author exercises originality through choices of angle, lighting, framing, and post-editing. For commentators, *Painer* demonstrates the Court's willingness to locate originality in even modest acts of discretion, thereby reinforcing the

notion that what matters is not the scale of human involvement but the presence of identifiable creative judgment (Hugenholtz and Quintais, 2021, pp. 1200-1205). This reasoning has become a touchstone for discussions of AI-assisted creation, since it suggests that where humans shape conception or final editing, even if execution is delegated to machines, protection can still be justified. Building on the reasoning in *Painer*, commentators identify three phases of the creative process: conception, execution, and redaction. This reflects the EU's broader reliance on a personality-based conception of originality, where copyright protection hinges on the author's free and creative choices, thereby excluding autonomous AI outputs but leaving space for human–machine collaboration (Zhuk, 2024, pp. 1300-1301).

While AI systems may dominate execution, human input at the conception and redaction stages often provides the necessary creative choices. Where these choices shape the outcome, the result can qualify as a copyright-protected work; where they are absent, no "work" arises. Importantly, the unpredictability of AI outputs does not in itself exclude protection, provided the final result aligns with the author's overall creative intent (Hugenholtz and Quintais, 2021, p. 1212).

The Court further refined the threshold in *Football Dataco Ltd v. Yahoo! UK Ltd* (C-604/10, 2012), where it rejected the notion that "*skill and labor*" alone suffice for protection. Databases of football fixtures lacked originality because their structure was dictated by technical and functional requirements, leaving no room for free and creative choices. The Court rejected the so-called "*sweat of the brow*" doctrine by ruling that mere labour, investment, or skill in compiling data does not suffice for copyright protection. Instead, the Court insisted on creative choice in the selection or arrangement of data as the marker of originality. As academic commentary highlights, this judgment further clarified that originality requires subjective decision-making, excluding works that are purely the product of mechanical effort (Hugenholtz and Quintais, 2021). This distinction is of particular relevance to AI outputs: just as databases compiled without creative discretion cannot qualify as works, content produced autonomously by AI systems, absent human choices, struggles to meet this standard. For AI-assisted works, this reasoning signals that mere prompting, data processing, or technical effort cannot ground protection unless coupled with genuine creative decisions by a human author.

Later judgments reinforced and consolidated this framework. In *Levola Hengelo BV v. Smilde Foods BV* (C-310/17, 2018), the Court held that the taste of cheese could not qualify as a work because it was not identifiable with sufficient precision and objectivity. While not directly about technology, the decision highlights an important condition: works must embody a perceptible form of expression. This requirement has clear implications for AI, where outputs must be sufficiently concrete and attributable to human creative choices to qualify as copyrightable subject matter. Similarly, in *Cofemel – Sociedade de Vestuário SA v. G-Star Raw CV* (C-683/17, 2019), the Court confirmed that originality is the sole requirement for protection, rejecting additional national standards such as artistic merit. And in *SI, Brompton Bicycle Ltd v. Chedech/Get2Get* (C-833/18, 2020), the Court held that functional designs may be protected if they reflect free and creative choices not wholly dictated by technical constraints. Both cases reinforce the human-centric originality test while making clear that external or technical limitations cannot erase creative freedom altogether. These cases demonstrate that fully automated works produced solely by AI, without meaningful human input, generally fail to satisfy the originality standard. By contrast, AI-assisted works, where human creativity is present, can be eligible for copyright protection, provided they bear the imprint of the author's personality through free and creative choices. Human involvement remains decisive in fulfilling the originality requirement, reflecting the broader rationale of copyright: to

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incentivise authors to create original works utilising their unique abilities (Gaffar and Albarashdi, 2025, pp. 43-44).

In *Funke Medien NRW GmbH v. Bundesrepublik Deutschland* (C-469/17, 2019), the Court stressed again that originality arises when an author can make free and creative choices and thereby stamp the work with their personal touch. Taken together, these decisions illustrate a clear trajectory: the Court of Justice of the European Union has consistently rejected protection for outputs lacking identifiable human authorship, while affirming that technological or functional tools do not negate protection when human creativity is present (Rosati, 2023).

Finally, in *SAS Institute Inc. v World Programming Ltd* (C-406/10), the Court reaffirmed the limits of protection by excluding ideas, methods, and functional elements from copyright, underscoring that only expressive acts of intellectual creation fall within the scope of the acquis. Scholars argue that this judgment highlights a crucial boundary for AI: outputs that are essentially functional or generated without expressive human choice remain outside copyright's reach, no matter how technically sophisticated (Lu, 2025).

These cases were chosen for analysis because they form the core acquis of originality case law as they are repeatedly cited in scholarship as the foundation of the EU's originality threshold (Hugenholtz and Quintais, 2021; Rosati, 2023). Across them, one can observe a strong tendency: the Court has consolidated a uniform, human-centred originality test that requires free and creative choices expressed in the final work. The trend has been toward consistency and harmonisation, rejecting national deviations such as "skill and labour" or artistic value tests. For AI-generated and AI-assisted works, the implication is clear: the absence of human creative input precludes protection, while AI used as a tool within a process guided by human intention can support originality. In this sense, the Court of Justice of the European Union's jurisprudence sets a high but stable threshold, ensuring that copyright remains tied to human authorship, even as new technologies challenge the boundaries of creative production.

Read together, these decisions chart a trajectory in which the Court of Justice of the European Union has consistently applied and elaborated the "own intellectual creation" standard across different domains, from text and databases to photography and software. While the standard has proven flexible, accommodating even minimal creative discretion, it has also drawn a clear line against works produced without human input. As the academic debate underlines, this case law provides the essential benchmark for evaluating the copyright status of AI-generated and AI-assisted works: it affirms that protection hinges not on effort or technological sophistication but on whether the final output embodies discernible human creative choices (Hugenholtz and Quintais, 2021; Rosati, 2023). Applied to the Two-Tier Matrix, the Court of Justice of the European Union's line of cases reinforces the subjective authorship tier: where a discernible human imprint exists (free creative choices), protection follows; where it does not, protection will generally be denied.

Below is a comparative case-law table that applies the Two-Tier Matrix (Tier 1 = independent creation / "human intellectual effort"; Tier 2 = minimal creativity / "author's own intellectual creation" or "free-creative choices") to the most-cited Chinese and EU decisions discussed in the manuscript. The abbreviations C and E are used for Chinese and EU case law, respectively.

Table 2: Comparative case law with application of the Two-Tier Matrix

Juris-diction	Case year	Tier 1 – Independent Creation / Human Intellectual Effort	Tier 2 – Minimal Creativity / Author's Own Intellectual Creation
C1	**Beijing Internet Court** *Film Law Firm v. Baidu* (AI-generated article) 2018	**No** – The court held that the article was produced solely by the AI system; no human author could be identified.	**No** – Without a human author, the "*author's own intellectual creation*" requirement was unmet.
C2	**Shenzhen Nanshan District Court** *Tencent v. Yingxun* (Dreamwriter financial report case) 2019	**Yes** – The human team provided data input, chose themes, and supervised the AI-generated report, giving the work a human origin.	**Yes** – The court emphasised that the team's "*selection, judgment and arrangement*" of information reflected creative choices, thus meeting the originality threshold.
C3	**Beijing Internet Court** *Automated Video Screenshot* (camera-placement & framing case) 2020 affirmed 2021	**Yes** – The operator's decisions on camera placement, framing and technical settings were deemed sufficient human contribution.	**Yes** – The court recognised that the human choices in camera placement and framing, despite being influenced by technical constraints, demonstrated a sufficient degree of minimal creativity, illustrating a lower threshold than the EU's "*free creative choices*" standard.
C4	**Beijing Internet Court** *Li v. Liu* (Stable Diffusion AI-generated image case) 2023	**Yes** – The court found that the plaintiff's design of prompts, selection of keywords and iterative parameter tuning constituted "*human intellectual input*" that directed the AI output.	**Yes** – The court held that the plaintiff's "personal aesthetic judgment" and "*creative choices*" were reflected in the final image, satisfying the "*author's own intellectual creation*" standard (adapted from Chinese doctrinal commentary).
E1	**Infopaq International A/S v. Danske Dagblades Forening** (C-5/08) 2009	**Yes** – The newspaper excerpt was created by a journalist; the court recognised human authorship.	**Yes** – The Court held that originality requires "*the author's own intellectual creation*," i.e., free choices in selection, sequence and combination of words.
E2	**Eva-Maria Painer v. Standard VerlagsGmbH** (C-145/10) 2011	**Yes** – The photographer made free choices about angle, lighting, composition.	**Yes** – The Court emphasised that even modest artistic decisions satisfy the "*author's own intellectual creation*" test.
E3	**Football Dataco Ltd v. Yahoo! UK Ltd** (C-604/10) 2012	**No** – The football fixture database was compiled by a computer; no human creative input beyond data collection.	**No** – The Court rejected "*skill and labour*" as a basis for originality; without free creative choices, the work lacked protection.
E4	**Levola Hengelo BV v. Smilde Foods BV** (C-310/17) 2018	**No** – The Court held that a taste is not a "work" as it lacks a "*perceptible form of expression*," a prerequisite for copyright protection. The question of human intellectual effort is secondary.	**No** – The Court held that for a subject matter to be classified as a "work," it must be expressed in a manner that makes it identifiable with sufficient precision and objectivity. The taste of cheese was deemed too subjective and variable to be perceived and defined in such a precise and objective form, thus

Juris-diction	Case year	Tier 1 – Independent Creation / Human Intellectual Effort	Tier 2 – Minimal Creativity / Author's Own Intellectual Creation
			failing the fundamental requirement for copyright protection.
E5	**Cofemel v. G-Star Raw CV** (C-683/17) 2019	**Yes** – The designer made creative choices in the garment's design and presentation.	**Yes** – The Court stressed that the work must bear the "*personal stamp*" of the author; the design satisfied this requirement.
E6	**Funke Medien NRW Gmb H v. Bundesrepublik Deutschla nd** (C-469/17) 2019	**Yes** – The author's selection of facts and wording in the report showed human input.	**Yes** – The Court affirmed that originality does not demand artistic merit, only free creative choices.
E7	**Brompton Bicycle Ltd v. Chedech/Get2Get** (C-833/18) 2020	**No** – The technical constraints of the design (functional requirements) left little room for creative choices.	**No** – The Court held that when the work is dictated by technical rules, the author's personal imprint is absent, so originality fails.
E8	**SAS Institute Inc. v. World Programming Ltd** (C-406/10) 2012	**No** – The program's output was a purely functional algorithm; human input was limited to functional specifications.	**No** – The Court excluded ideas, methods and purely functional elements from copyright protection.

5. CONCLUSION

This comparative analysis, framed by the Two-Tier Matrix, confirms the study's initial hypothesis: China's user-oriented framework offers greater flexibility for accommodating AI-generated works, while the EU's author-centric model prioritises doctrinal stability, albeit at the cost of excluding autonomous AI outputs. The trajectories of both jurisdictions reveal how their distinct applications of the Matrix's two tiers have shaped their responses to the challenge of AI creativity.

In China, the statutory definition of a work as an "*original intellectual achievement*" has been interpreted by courts through a pragmatic expansion of the objective originality tier. By recognising preparatory, supervisory, and aesthetic human inputs—from data selection in *Dreamwriter* to prompt engineering in *Li v. Liu*—Chinese jurisprudence has progressively lowered the threshold for "*minimal creativity*." This approach effectively decouples protection from a deep inquiry into subjective personality, focusing instead on demonstrable human intellectual contribution at any stage of the creative process. The result is a hybrid, adaptable model that extends copyright protection to a wider range of AI-assisted outputs, providing legal certainty for commercial users and developers.

Conversely, the EU, in the absence of a uniform statutory definition, has leveraged CJEU jurisprudence to consolidate a rigid and harmonised threshold within the subjective authorship tier. Landmark rulings from *Infopaq* to *Brompton* have consistently anchored protection to the "*author's own intellectual creation*," demanding that a work bear the imprint of a natural person's free and creative choices. This personality-based conception provides remarkable coherence and safeguards the traditional copyright paradigm. However, it inherently resists the accommodation of AI-generated works where such a direct, subjective human imprint is absent, creating a legal vacuum for fully autonomous machine outputs.

Thus, the Two-Tier Matrix not only provides the analytical scaffold that elucidates this fundamental divergence but also delivers precise closure to the comparative argument. China's path demonstrates the legal consequences of prioritising the objective tier, fostering a flexible environment for technological integration. The EU's approach illustrates the implications of an unwavering commitment to the subjective tier, ensuring doctrinal purity but potentially at the expense of technological adaptability. Ultimately, this comparison, clarified by the Matrix, illuminates the core tension in modern copyright law and provides a coherent tool for assessing future reforms in the global governance of AI-generated and AI-assisted works.

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