

Human–Machine Co-Creation and Digitised Intangible Cultural Heritage: Defining Rights Subject Matter and Legal Boundaries in the Chinese Context

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Abstract: Generative technologies are being increasingly integrated into the digitisation of intangible cultural heritage (ICH), rendering the legal status of outputs from human–machine co-creation highly ambiguous. This paper explores how Chinese copyright law should define protectable subject matter in the context of human–machine co-creation for digitised ICH, based on empirical research findings. It is found that participants hold markedly divergent understandings of human creative contributions, and co-created outputs are heavily reliant on pre-existing ICH materials, which obscures the boundaries of effective human control. Chinese courts attempt to identify human intellectual input by disaggregating the creative process, yet a stable and universally applicable criterion for determining protectable subject matter remains unestablished. This paper argues that copyright protection should be limited to identifiable human interventions in the final expression, which independently meet the originality threshold under Chinese copyright law.

Keywords: Human–machine co-creation; Digitized intangible cultural heritage; Copyright law; Rights subject matter; Generative AI; China

1. Introduction

Digitization and platform-based governance are reshaping the production, access and preservation of ICH, giving rise to "digital heritage" and new participatory ecologies [1]. ICH undergoes a digital lifecycle encompassing collection, storage, display and AI training, with layered digital outputs generated at each stage. The boundaries of protectable subject matter for these outputs remain unclear, primarily due to the complex intersection of copyright law, cultural heritage laws and data protection regulations, as well as the competition and conflicts of multiple interests involved. This ambiguity may enable platform operators or users to claim exclusive rights over AI-generated outputs that largely replicate public-domain cultural elements, thereby restricting downstream access to such cultural resources.

Digitization and platform-based governance are reshaping how intangible cultural heritage (ICH) is produced, accessed, and preserved, giving rise to what has been described as "digital heritage" and new forms of participatory cultural practice. ICH now moves through a digital lifecycle that includes collection, storage, display and increasingly AI training. Each stage produces layered digital outputs whose legal status remains uncertain.

This uncertainty emerges at the intersection of copyright, cultural heritage law and data governance, where competing interests coexist [2]. In particular, the integration of generative artificial intelligence raises concerns that digital platforms or users may assert exclusive rights over outputs that substantially reproduce public-domain cultural elements [3].

Within this digital lifecycle, the most complex category involves human–machine co-creation. Unlike the traditional model in which humans simply use technological tools, co-creative systems operate through iterative interaction between human inputs and algorithmic generation [4]. Through prompting, selection and evaluation, human participants guide the generation process while the system simultaneously shapes subsequent creative decisions. For example, participants in experimental workshops have collaborated with generative image models to create visual narratives about cultural heritage sites through iterative prompting and refinements [5].

Such outputs cannot easily be characterized as either human works or automated reproductions.

When humans and algorithms jointly generate cultural representations, the legal status of these outputs becomes ambiguous. This ambiguity complicates attribution, downstream reuse and responsible AI deployment. Clarifying the boundaries of rights subject matter in hybrid creative settings is therefore essential for enabling predictable reuse and sustainable cultural innovation.

Drawing on a light-touch empirical study of the Danzhai batik community in Guizhou Province, this article explores how human–machine co-creation challenges existing concepts of copyright subject matter. It argues that copyright protection should focus on identifiable human creative interventions reflected in the final expression, while maintaining the public-domain status of traditional cultural expressions.

2. Human-Machine Co-Creation and the Conceptual Limits of Rights Subject Matter

2.1 From Digital Documentation to Co-Generated Cultural Artefacts

Digitization of cultural heritage produces different types of outputs that are not legally equivalent. Existing scholarship distinguishes between documentary outputs, expressive outputs and co-generated outputs [6,7]. Documentary outputs primarily serve preservation functions, such as recordings of craft techniques or digitized archives of oral traditions. Because they reproduce existing cultural facts, they often involve limited creative choices and therefore struggle to meet copyright originality requirements [8,9]. Where digitization merely reproduces existing cultural heritage, attaching new exclusive rights risks enclosing public-domain materials [10,11].

Expressive outputs arise where human actors make identifiable creative choices in selecting, arranging or interpreting cultural elements. When such choices exceed technical reproduction and embody personalized expression, copyright protection may arise [12]. The emergence of generative AI has introduced a third category: co-generated outputs. These outputs are produced through iterative interaction between human inputs and algorithmic generation [13]. In such contexts, neither the human participant nor the AI system fully determines the final expression.

This distributed form of creativity complicates the traditional legal framework. Outputs cannot easily be characterized as faithful reproductions, yet algorithmic generation may prevent them from satisfying traditional requirements of human authorship [14].

2.2 Human–Machine Co-Creation as a Distinct Mode of Cultural Production

Human–machine co-creation differs fundamentally from the traditional paradigm of humans using tools. In conventional creative processes, technology functions as an instrument executing

human intent. By contrast, co-creative systems distribute creative agency between human and computational actors [15].

This development challenges the author-centred assumptions of copyright law. Traditional theories of authorship are grounded in human intellectual labour. Artificial intelligence cannot be recognised as a legal subject within this framework. Both the US Congressional Research Service and the US Copyright Office emphasise that authorship remains limited to human creators, although identifying sufficient human contribution is becoming increasingly difficult in the context of generative AI [16]. Earlier scholarship largely treated AI as a technical tool assisting human creativity [17]. Under this view, AI merely facilitates the realization of human ideas. As long as human intellectual input can be identified, the resulting output may still qualify as a human intellectual achievement [18].

However, advances in generative technologies increasingly position AI as an active participant shaping creative outcomes. Algorithmic systems recombine training data and produce outputs that cannot be entirely predicted or controlled by users. Human–machine co-creation therefore represents a structurally distinct form of cultural production rather than a simple extension of tool use.

2.3 Why Existing Notions of Rights Subject Matter Fall Short

Traditional copyright analysis relies on identifying a stable expression attributable to a human author. In co-creation settings, however, creativity often manifests through prompt design, parameter adjustment and iterative selection rather than direct production of expression [19]. This shift places pressure on fundamental copyright concepts such as the idea–expression dichotomy and the substantial similarity test. Existing frameworks either exclude AI-generated content entirely or impose rigid standards of human control that overlook hybrid creative practices [20,21]. These tensions reveal structural limitations in prevailing notions of rights subject matter when applied to human–machine co-creation. Recognizing these limitations provides the foundation for examining how such issues emerge in the digitization of ICH in China.

3. Chinese Practice in Defining Rights Subject Matter in Human–Machine Co-Created Digitised Intangible Cultural Heritage

3.1 Methods

To explore how participants understand creative contribution in human–machine co-creation, six semi-structured interviews were conducted in July 2025 in Danzhai County, Guizhou Province. Semi-structured interviews allow participants to describe their experiences while enabling researchers to explore emerging themes [22,23,24].

Interviews were conducted on a one-to-one basis using a semi-directed format. They were organized around a set of pre-defined themes, while allowing participants to elaborate freely on the basis of their own experiences. Interview questions primarily focused on the allocation of roles within the digitization process, understandings of creative contribution, and views on the involvement of generative tools. Each interview lasted approximately forty-five to sixty minutes, and data collection continued until no substantively new themes emerged within the scope of this exploratory study, consistent with methodological guidance on data saturation in relatively homogeneous qualitative samples [25]. An overview of interview participants and interview conditions is provided in Table 1.

Table 1: Overview of Interview Participants.

Participant	Role	Context/setting (generalised)	Interview mode	Duration
P1	ICH practitioner	Craft workshop and transmission practice	In-person	60min
P2	ICH practitioner	Institutional collaboration and digitisation practice	In-person	60min
P3	Visitor	Science-centre exhibition	In-person	45min
P4	ICH apprentice	Learning and practice of traditional techniques	In-person	60min
P5	Visitor	Science-centre exhibition	In-person	45min
P6	Visitor	Science-centre exhibition	In-person	45min

Participants included heritage practitioners, apprentices and visitors participating in AI-assisted co-creation activities within a digital heritage science museum. Interviews lasted between 45 and 60 minutes and were analysed using inductive thematic analysis [26].

The purpose of the study was exploratory rather than representative. The aim was to identify practical perceptions of authorship and creativity in real co-creation settings.

3.2 Key Findings

3.2.1 Guided Participation Rather than Passive Selection

Participants did not view their role as passive selection among machine outputs. Visitors emphasized that they drew elements, modified patterns and guided the direction of generation. However, they also recognized that the system significantly reshaped their inputs. Importantly, participants rarely used legal concepts such as “authorship”. Instead, they described their role in terms of participation, guidance or decision-making. Even when they perceived creative involvement, they were reluctant to treat the resulting outputs as copyrightable works.

3.2.2 Generated Outputs as Derivative from Existing Works

Both visitors and practitioners understood AI-generated outputs as recombination’s of existing batik designs rather than entirely new creations. The generative system relied heavily on datasets of practitioners’ works stored in the museum database. Practitioners therefore emphasized the continuity between generated images and traditional patterns. From their perspective, AI systems reproduced stylistic features derived from existing creative traditions rather than producing autonomous works.

3.2.3 Divergent Perceptions of Creativity

Although participants broadly agreed on the technical structure of the co-creation process, they differed in their evaluation of creativity. Visitors sometimes perceived their contributions as creative, whereas practitioners emphasised the system’s reliance on existing works. Despite these differences, participants shared the view that current generative systems largely reproduce established stylistic frameworks.

4. Judicial Approaches in China

Chinese judicial practice has begun to address the copyright status of AI-generated content [27]. The most widely discussed case is *Li v Liu*, decided by the Beijing Internet Court in 2023 [28].

The plaintiff generated an image using the generative model Stable Diffusion through prompts and parameter adjustments. The defendant later used the image without attribution. The central legal issue was whether the generated image constituted a copyrightable work.

The court held that copyright protection requires an original intellectual achievement expressed in a certain form. Rather than excluding AI-generated content categorically, the court analyzed the specific contributions of different actors.

Three roles were distinguished:

(i) the AI model developer, (ii) the AI system, (iii) the user

The court concluded that model developers contribute at the level of tool creation rather than expression, while AI systems cannot be recognized as legal subjects. Authorship therefore depended on whether the user's intellectual input was reflected in the final output.

The court identified several factors:

(i) whether the user's prompts and parameter settings were reflected in the final output, rather than remaining at an abstract or preparatory level; (ii) whether the user exercised substantive control over the generation process, as opposed to merely triggering an automated response; and (iii) whether the resulting expression was non-random and sufficiently personalized, such that it could be traced back to the user's intellectual input.

This reasoning demonstrates a process-based approach to identifying human contribution. However, it does not directly address the specific risks associated with the use of traditional cultural expressions in AI training.

5. Defining Rights Subject Matter in the Chinese Legal Context

In light of the structural tensions identified above, the boundaries of rights subject matter require cautious reconfiguration. Any framework must balance two objectives: recognizing genuine human intellectual contributions in AI-assisted creation while preserving the public-domain character of traditional cultural expressions. This chapter therefore proposes a distinction between minimal operational inputs and substantial creative contributions when assessing the protectability of human-machine co-created digitized ICH outputs.

5.1 *The Existing Structure of Rights Subject Matter in Chinese Law*

Chinese copyright law defines works as original intellectual achievements expressed in a certain form and provides an open list of protected categories [29]. Despite this flexibility, the doctrine remains grounded in the premise that expression can be traced to human intellectual activity. Human-machine co-created ICH outputs challenge this premise because algorithmic generation weakens the causal link between human input and final expression. At the same time, the Law on Intangible Cultural Heritage protects ongoing cultural practices rather than individual works [30]. Digitized ICH outputs therefore fall between the two regimes. Empirical findings suggest that protection should focus on identifiable human creative interventions. Prompt design and sustained interaction with generative systems may reflect intellectual labour deserving recognition, whereas simple operational inputs or trial-and-error selections rarely satisfy the originality requirement. At the same time, caution is necessary. ICH materials often originate from collective traditions and function as shared cultural resources. Granting exclusive rights to outputs that closely reproduce

traditional expressions risks enclosing cultural heritage that should remain publicly accessible. A balanced approach should therefore recognize genuine human creativity while preserving the public-domain character of traditional cultural elements.

5.2 Challenges Posed by Human–Machine Co-Created Digitized Intangible Cultural Heritage to Existing Structures of Rights Subject Matter

Human–machine co-created digitized ICH outputs occupy a conceptual grey zone between copyright law and the Intangible Cultural Heritage Law. Under copyright law, such outputs often struggle to meet originality and authorship requirements centered on identifiable human creativity. Algorithmic recombination complicates the attribution of expression to a specific natural person. At the same time, these outputs fall outside the logic of the ICH Law because they lack the intergenerational continuity and social context that characterize traditional cultural practices.

Museum-based co-creation illustrates this tension. Batik images generated through visitor interaction with AI systems involve drawing, element selection and iterative modification. However, the generative system substantially reshapes these inputs through preset algorithms and stylistic parameters. As a result, the final images reflect algorithmic mediation rather than direct expressions of visitors' intellectual activity. Visitors themselves rarely perceive the outputs as copyrightable works; instead, they understand them as part of an interactive museum experience oriented toward participation, display and education.

A related dynamic appears on web-based generative platforms. Users combine system options to produce patterns, often with clearer practical or commercial intentions, which encourages them to view the outputs as their own designs. Yet interviews with ICH bearers reveal a more cautious perspective. Generated patterns rely heavily on existing datasets and predefined stylistic frameworks, while user choices exert limited influence on the overall structure. Consequently, although online environments increase users' willingness to claim rights, they further blur the connection between human input and final expression.

These practices expose a structural difficulty. Traditional copyright analysis assumes a stable expression and identifiable author. In co-creative environments, however, both the stability of expression and the identification of authorship become uncertain.

Chinese courts have begun to respond by examining the creative process itself. In generative content disputes, the Beijing Internet Court has considered whether prompts, parameter settings and output selection reflect personalized human choices embodied in the final expression. While this approach offers a possible framework for recognizing human contribution, its application to ICH requires particular caution. Meeting the general originality threshold should not automatically justify protection where generated outputs substantially reproduce traditional cultural elements.

Empirical evidence reinforces this concern. ICH datasets are relatively limited, and generated outputs frequently resemble existing works by heritage practitioners. Moreover, museum-based co-creation primarily occurs within contexts of cultural dissemination and public engagement rather than commercial production. Even if a specific output qualifies as a work, current doctrine provides limited guidance on how to prevent the enclosure of existing works or public-domain cultural elements within new layers of exclusive rights.

5.3 Cautiously Reconfiguring Rights Subject Matter Boundaries in Human–Machine Co-Creation under Chinese Law

5.3.1 Substantial Human Contribution as the Basis for Protection

For web-based human-machine co-creation carried out through prompts, the key question is whether the act of entering prompts involves sufficient originality. In other words, does it lead to parts of the generated output that differ in a significant way from the original works? A further question is whether this element of originality falls within the scope of intellectual property protection and can be treated as protectable subject matter under IP law.

With the launch and continuous refinement of AI tools, there has been increasing discussion on how to write effective prompts to generate high-quality artistic images. Some people have even started selling their prompts on online platforms [31]. This trend also reflects a recognition of the value of prompts. Users typically form concrete expectations about what a given prompt should generate. They therefore stay actively involved in a dynamic process of prompt design, parameter adjustment and output selection. When the output does not match their expectations, they repeatedly modify and update the prompts until they reach a satisfactory result [32]. In the context of digitized ICH, the role of prompts in AI-assisted creation should not be overlooked, even where generated outputs closely resemble existing works of heritage bearers. Prompts do more than initiate technical processes: they articulate human intentions and guide the direction of generation. Ignoring their function risks excluding meaningful creative activity from protection and may indirectly lower the cost of infringement. Because generative outputs result from algorithmic processing applied to instructions embedded in prompts, the generation process retains a degree of logical traceability. As techniques for reverse-engineering prompts develop, infringers may analyse existing outputs, reconstruct similar prompt structures and mass-produce comparable content without directly copying the original images, while still reproducing their core expressive substance.

From the perspective of the legislative purpose of the PRC Copyright Law, protecting creativity-driven human intellectual labor remains central. Article 1 emphasizes the protection of authors' rights and the encouragement of creative activity in order to promote cultural and scientific development. Within AI-assisted creation, prompts often embody the conception of creative goals and reflect choices regarding style, structure and cultural references. In this sense, human creativity increasingly operates through guiding generative processes rather than directly determining every detail of the final expression. Recognizing the value of such input therefore aligns with the broader objective of incentivizing creative activity. A similar concern was noted in the first Chinese case addressing copyright in AI-generated images, where the presiding judge observed that excluding all AI-assisted outputs from the category of works could discourage technological and industrial development [33].

At the same time, recognizing the relevance of prompts raises important doctrinal questions within the idea-expression dichotomy. Although the current Copyright Law does not explicitly use this term, the principle has long structured Chinese copyright doctrine: abstract ideas and methods are not protected, whereas concrete forms of expression are. Prompts occupy an intermediate position within this framework. They are more specific than abstract ideas but do not always constitute expression in the traditional sense. Their legal status therefore depends on the degree to which they translate conceptual intentions into concrete instructions shaping the final output.

Not all prompts meet this threshold. Simple or generic instructions often resemble operational commands and leave little room for personalized choice. By contrast, prompts that incorporate complex structures and reflect aesthetic preferences, cultural knowledge or deliberate combinations of elements may embody identifiable intellectual effort. In such circumstances, they are more likely to

satisfy the originality requirement and qualify as protectable expression under copyright law [34].

5.3.2 Human–Machine Co-Creation in Museum Settings: Experiential Participation and the Limits of Rights Subject Matter

Human–machine co-creation in museums is primarily designed as a mechanism of public cultural participation rather than the production of copyright works. Although visitors may draw, select elements and influence the direction of generation, they operate within systems whose generative logic, stylistic parameters and datasets are predetermined by museums and technology providers. Consequently, the resulting images largely reorganize stylistic features derived from existing ICH works rather than reflect independent personalized expression. Interviews with heritage practitioners further suggest that these outputs are often perceived as extensions of existing cultural styles rather than new creative works.

In this context, museum-based co-creation should be understood primarily as a form of cultural dissemination and public engagement. Visitors themselves rarely expect intellectual property rights over the generated images. Extending copyright protection to such outputs could therefore conflict with participants' expectations and undermine the openness of public cultural spaces. At the same time, museum practices illustrate the diversity of human contributions within human–machine co-creation. As generative technologies evolve, more professional and sustained forms of collaboration may emerge, including systematic drawing inputs and complex human–AI co-design processes. Where human intellectual input produces identifiable and attributable personalized expression, such outputs may potentially fall within the scope of copyright protection.

5.3.3 Protection of the Public Domain

Traditional expressions of intangible cultural heritage are, by definition, long-transmitted cultural forms and therefore function as shared cultural resources. Empirical findings indicate that datasets used for ICH-related generative systems are relatively limited and often repetitive. Generated outputs therefore frequently take the form of algorithmic recombination of existing patterns rather than substantial innovation. This practice highlights the need for particular restraint in extending exclusive rights to human–machine co-created ICH outputs. Without careful boundaries, copyright protection risks enclosing cultural resources that properly belong to the public domain and undermining the openness and sustainability of intangible cultural heritage [35,36,37]. Under appropriate conditions, limited protection may encourage creative participation and support new forms of ICH expression in the digital age. Nevertheless, any such protection must remain narrowly defined and sensitive to the collective nature of cultural heritage.

6. Conclusion

This article examines the status of digitized intangible cultural heritage as subject matter of rights within the intellectual property framework, drawing on the digital ICH lifecycle and practices of human–machine co-creation. It argues that such outputs are neither mere faithful reproductions of traditional heritage nor easily assessed under originality standards premised on a single human author. Their emergence exposes structural limitations in existing intellectual property subject-matter concepts.

Within the Chinese legal context, courts and practitioners increasingly assess protectability by examining specific human intellectual contributions in both museum-based and online generative

environments. However, stable identification criteria remain underdeveloped.

This article therefore proposes a distinction between minimal operational inputs and substantial creative contributions. Basic system guidance or repetitive trial-and-error should not constitute valid authorship or justify independent rights claims. By contrast, complex prompt design and sustained human–AI collaboration that shape the final expression may deserve legal recognition. Algorithmic involvement alone should not automatically exclude a work from protection.

At the same time, any protection must respect the public-domain character of traditional cultural expressions. Overextending copyright risks re-privatizing shared cultural resources and undermining collective heritage protection. In museum contexts centered on display, education and participation, human–machine co-creation should therefore be understood primarily as a mechanism of cultural engagement rather than the production of copyright works.

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