李某某诉刘某某侵害作品署名权、信息网络传播权纠纷案

Li v. Liu, The Dispute over Copyright Infringement of the Right of Authorship and Right of Communication through Information Network

案由:民事> 知识产权与竞争纠纷> 知识产权权属、侵权纠纷> 著作权权属、侵权纠纷> 侵害作品署名权纠纷和侵害作品信息网络传播权纠纷

Causes of Action: Civil > Intellectual Property and Unfair Competition Dispute > Ownership and Infringement Dispute > Ownership of Copyright and Infringement Dispute > Dispute over the Infringement of the Right of Authorship and the Right of Communication through Information Network

案 号：(2023)京 0491 民初 11279 号

Case Number: (2023) Jing 0491 Min Chu No. 11279

审理法官： 朱阁 颜君 李婉星

Trial Judge: Ge Zhu, Jun Yan, Wanxing Li

审理法院： 北京互联网法院

Trial Court: Beijing Internet Court

审结日期：2023.11.27

Date of Conclusion: 11/27/2023

案件类型： 民事一审

Case Type: Civil; First Instance

审理程序： 一审

Trial Procedure: First Instance

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北京互联网法院
Beijing Internet Court

民事判决书
Written Civil Rulings

(2023)京 0491 民初 No. 11279
(2023) Jing 0491 Min Chu No. 11279

原告：李某某
Plaintiff: Li XX

委托诉讼代理人：孙彦，北京市天元律师事务所律师
Litigation Representative: Yan Sun, Beijing Tianyuan Law Firm

委托诉讼代理人：李宇凡，北京市天元律师事务所律师
Litigation Representative: Yufan Li, Beijing Tianyuan Law Firm

被告：刘某某。

Defendant: Liu XX

原告李某某与被告刘某某侵害作品署名权、信息网络传播权纠纷一案，本院于 2023 年 5 月 25 日立案后，依法组成合议庭，适用普通程序，经庭前会议后，于 2023 年 8 月 24 日公开开庭进行审理。原告李某某及其委托诉讼代理人孙彦、李宇凡，被告刘某某通过本院电子诉讼平台在线参加诉讼。本案现已审理终结。

Regarding Plaintiff Li and Defendant Liu's dispute over copyright infringement of the right of authorship and right of communication through information network, this court publicly reviewed the case at issue on August 24, 2023. This court reviewed the case here after this court had docketed the case on May 25, 2023, created a collegial panel in compliance to law, applied ordinary procedures, and held pre-trial meetings. Plaintiff Li, the Plaintiff's litigation representatives Yan Sun, Yufan Li, and Defendant Liu joined the trial via this court's digital litigation platform. This court has entered its final ruling.

原告李某某向本院提出诉讼请求：1.请求判令被告在涉案百家号发布公开声明向原告赔礼道歉，消除其侵权行为给原告造成的影响；2.请求判令被告赔偿原告经济损失 5000 元。事实与理由：2023 年 2 月 24 日，原告使用开源软件 StableDiffusion 通过输入提示词的方式生成涉案图片，后将该图片以"春风送来了温柔"为名发布在小红书平台。近日，原告发现，百家号账号"我是云开日出"在 2023 年 3 月 2 日发布了名为《三月的爱情，在桃花里》的文章，该文章配图使用了涉案图片。被告未获得原告的许可，且截去了原告在小红书平台的署名水印，使得相关用户误认为被告为该作品的作者，严重侵犯了原告享有的署名权及信息网络传播权。被告应当赔偿原告的经济损失并进行赔礼道歉以消除影响。综上，原告特依法向法院提起诉讼，请求法院判如所请。

Plaintiff Li submitted their pleading as follows to this court: 1. Requesting the Defendant to publicly apologize to the Plaintiff on Bai Jia Hao (content creation) platform, which is involved in the proceeding, in order to eliminate the impact caused by the Defendant's allegedly infringing activities against the Plaintiff; 2. Requesting the Defendant pay the economic losses of 5,000 yuan. Facts and reasoning: On April 2, 2023, the Plaintiff created the image involved in this proceeding by entering prompts in the open-source software, Stable Diffusion. Subsequently, the Plaintiff named the image as "Tenderness Sent by the Spring Breeze" and posted them on "Little Red Book (Xiaohongshu)" (social media and e-commerce platform). Recently, the Plaintiff discovered that the Bai Jia Hao account, named "I Am the Sunrise After the Clouds Dissipate," published an article, named "Love in March, amongst Peach Blossoms" on March 2, 2023. The article incorporated the image involved in this proceeding. The Defendant did not obtain permission from the image's author, which seriously violated the Plaintiff's right of authorship and right of communication through information network. The Defendant should compensate the Plaintiff's economic losses and apologize in order to eliminate any impact caused by the infringement. In short, the Plaintiff filed this suit in court in compliance to legal procedures, pleading the court to rule in accordance with their requests.

被告刘某某辩称，被告通过网络检索获取涉案图片，用作原创诗歌《三月的爱情，在桃花里》的配图，涉案图片具体来源已无法提供，亦无法说明涉案照片的水印情况，不确定原告是否享有涉案图片的权利；被告所发布主要内容为原创诗文，而非涉案图片，且没有商业用途，不具有侵权故意；如果法院认定涉案行为构成侵权，被告愿意向原告赔礼道歉，但是原告主张的经济赔偿数额过高，AI 生成图片市场价格很低，且被告身患重病，无力赔偿。综上，请求法院考虑实际情况进行判决。

The Defendant Liu argues that they obtained the allegedly infringing image through Internet searches, and that they used the work at issue as accompanying image to their original poem, "Love in March, amongst Peach Blossoms." The source of the allegedly infringing image is unavailable. Accordingly, there is no evidence regarding the image's watermark, and whether the Plaintiff enjoys any rights in the allegedly infringing image is uncertain. The Defendant's

published content is mainly original poetry and not the infringing image. In addition, the published content does not have any commercial use, and thus the use does not amount to willful infringement. If the court holds that the Defendant's conduct constitutes infringement, the Defendant is willing to apologize to the Plaintiff. However, the Defendant claims that the damages requested by the Plaintiff is excessive because the market price for AI-produced images is very low. In addition, the Defendant is seriously ill and thus is incapable to compensate the Plaintiff. In conclusion, the Defendant asks the court to rule in consideration of all factual circumstances.

当事人围绕诉讼请求依法提交了证据，本院组织当事人进行了证据交换和质证。对当事人无异议的证据，本院予以确认并在卷佐证。对案件的事实，本院认定如下：

The parties submit evidence according to their respective pleadings, and this court has processed the exchange of evidence and cross-examination. This court has confirmed and kept on file the undisputed evidence. This court has confirmed the factual evidence of this case as follows:

2023 年 2 月 26 日，原告将涉案图片(见图 6)发布在其小红书账号"董二千"(小红书号为)中，发布内容的标题为"春风送来了温柔"，该标题下除涉案图片外亦包含其他 5 张案外图片，标签为"#AI#[话题]AI 插画#AI 绘画#写真#少女#摄影#春天#美女"。经法院组织双方勘验，原告通过手机号码获取验证码的方式可以登录该账号并查看涉案图片的发布情况。

On February 26, 2023, the Plaintiff published the allegedly infringing image (see Image 6) in a post on their "Little Red Book" account, named "Dong Er Qian," with the title, "Tenderness Sent by the Spring Breeze". The post included the allegedly infringing image and five other images, following hashtags "#AI#[topic]AIillustration#AIdrawing#protrait#younggirl#photography#spring#beautifulgirl". Through this court's inspection, the Plaintiff could log into their account with a verification code and examine the publication status of the allegedly infringing image.

原告主张该图片系其于 2023 年 2 月 24 日通过软件 StableDiffusion 生成，其提交再现涉案图片生成过程的视频，具体操作步骤如下：

The Plaintiff claims that the image at issue was generated by the Stable Diffusion software on February 24, 2023, and submits a video rendition of the image generation process. The detailed operational procedures are the following:

1. 打开 bilibili 网站，搜索用户"秋葉 aaaki"，打开标题为"【AI 绘画】StableDiffusion 整合包 v4.2 发布!全新加速解压即用防爆显存三分钟入门 AI 绘画……"的视频，打开视频下方提供的网盘链接"https://pan.baidu.com/s/1sVmVqA2CGUsZwyRdjoA5Vg"，下载"sd-webui-aki-V4.2.7z"压缩包。解压缩，打开文件"A 用户协议.txt"，显示："本整合包仅用作 AIGC 技术学习，基于 Github 上开源项目 StableDiffusionWebui 制作，提供了算法的运行环境。使用本整合包即代表您已阅读并同意以下用户协议：您不得实施包括但不限于以下行为，也不得为任何违反法律法规的行为提供便利：反对宪法所规定的基本原则的。危害国家安全，泄露国家秘密，颠覆国家政权，破坏国家统一的。损害国家荣誉和利益的。煽动民族仇恨、民族歧视，破坏民族团结的。破坏国家宗教政策，宣扬邪教和封建迷信的。散布谣言，扰乱社会秩序，破坏社会稳定的。散布淫秽、色情、赌博、暴力、凶杀、恐怖或教唆犯罪的。侮辱或诽谤他人，侵害他人合法权益的。实施任何违背"七条底线"的行为。含有法律、行政法规禁止的其他内容的。因您的数据的产生、收集、处理、使用等任何相关事项存在违反法律法规等情况而造成的全部结果及责任均由您自行承担。"。

1. Open bilibili.com, and search account "Qiuye aaaki". Then, play the video named " 【AI Illustration】Stable Diffusion Integrated Package v4.2 Publication! Brand New Accelerated Ready-to-Use Decompression and Explosion-Proof Video Memory of the Three-Minute Introductory Tutorial of AI Illustration……" Open the link to an online storage disk provided below the video, https://pan.baidu.com/s/1sVmVqA2CGUsZwyRdjoA5Vg, and

download "sd-webui-aki-V4.2.7z" compressed file. Unzip the file and open folder "A User Agreement.txt," which states that "this integrated package is only for AIGC learning. Based on the Stable Diffusion Webui generation on the Github open-source project, this integrated package provides the operating environment for algorithms. Using this integrated package means that you have read and agreed to the user agreement provided below: You must not perform any of the activities in the nonexclusive list below, and you cannot engage in any unlawful conduct: conduct against the fundamental principles outlined by the Constitution, endangering national security, disclosing national secrets, subverting state authority, destroying national unity, damaging the reputation or interests of the state, inciting ethnic hatred or discrimination to undermine ethnic solidarity, breaching state religious policies, propagating heretical or superstitious ideas, spreading rumors to disturb economic and social order, disseminating obscenity, pornography, force, brutality, and terror or crime-abetting, humiliating or defaming others or infringing upon their reputation, privacy and other legitimate rights and interests, engaging in any conduct that violates the "Seven Base Line Principles," or any other content prohibited by laws and administrative regulations. You have sole responsibility for all unlawful impacts caused by your data generation, collection, processing, usage, and other related activities."

2. 打开"A 启动器.exe"，主页面如图 1 所示。选择版本后，点击一键启动。

2. Open "A Launcher.exe". See Image 1 for the main page. After you have selected the aforementioned version, click start.
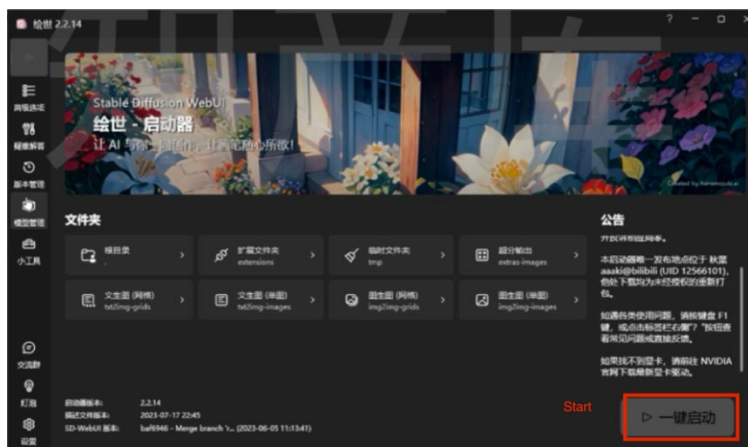
(Image 1)

3. 返回 bilibili 网站，搜索用户"K43"，打开标题为"StableDiffusion 个人制做写实向融合模型让你绘制出更美丽的亚洲，中国风少女人像"的文章，在文章中复制网址"https://huggingface.co/dcy/AsiaFacemix/tree/main"并在浏览器中打开，下载模型包"AsiaFacemix-pruned-fix.safetensors""lora-hanfugirl-v1-5.safetensors"。将模型"AsiaFacemix-pruned-fix.safetensors"移动到"models"-"Stable-diffusion"的文件夹后，将启动器(Stable-diffusion模型)的模型修改为"AsiaFacemix-pruned-fix.safetensors"。将模型"lora-hanfugirl-v1-5.safetensors"移动到"extensions"-"sd-webui-additional-networks"-"models"-"lora"的文件夹后，将启动器"Additional-Networks"中的模型 1 修改为 lord-hanfugir1-v1-5.safetensors"。

3. Return to bilibili.com and search for account "K43". Click on the article titled "Stable Diffusion Individualization with the Realistic Infusion Model for Illustrating a More Beautiful Asia, Chinese-Style Girl Portrait". Copy the link in the article, https://huggingface.co/dcy/AsiaFacemix/tree/main, and open the link in a browser. Download the model package named "AsiaFacemix-pruned-fix.safetensors""lora-hanfugirl-v1-5.safetensors" and relocate the model "AsiaFacemix-pruned-fix.safetensors" to the "models"-"Stable-diffusion" folder. Then, rename the launcher (Stable-diffusion model) as "AsiaFacemix-pruned-fix.safetensors". Relocate the "lora-hanfugirl-v1-5.safetensors" model to the folder named "extensions"-"sd-webui-additional-networks"-"models," and rename the model 1 in the launcher

named "Additiona1-Networks" as "lord-hanfugir1-v1-5.safetensors".

4.在正向提示词(Prompt)输入："(ultraphotorealistic:1.3)，extremelyhighqualityhighdetailRAWcolorphoto，inlocations，japanidol，highlydetailedsymmetricalattractiveface，angularsimmetricalface，perfectskin，skinpores，dreamyblackeyes，reddish-brownplaitshairs，uniform，longlegs，thighhighs，softfocus，(filmgrain，vividcolors，filmemulation，kodakgoldportra100，35mm，canon50f1.2)，LensFlare，GoldenHour，HD，Cinematic，BeautifulDynamicLighting"。中文译文为: (超逼真照片 1:3)，超高品质高细节的原始图像数据处理格式彩色照片，外景，日本偶像，高度细节对称且迷人的脸，棱角匀称的脸，完美的皮肤，皮肤毛孔，梦幻般的黑眼睛，红褐色的辫子，均匀，长腿，长筒袜，软对焦，(胶片纹理，生动的色彩，胶片仿真，柯达黄金肖像 100.35mm，佳能 50f1.2)，镜头光晕，黄金时间，高清，电影，美丽的动态灯光。在反向提示词(NegativePrompt)输入"((3d，render，cg，painting，drawing，cartoon，anime，comic:1.2))，badanatomy，badhands，text，error，missingfingers，extradigit，fewerdigits，cropped，worstquality，signature，watermark，username，blurry，artistname，(longbody)，badanatomy，liquidbody，ma1formed，mutated，badproportions，uncoordinatedbody，unnaturalbody，disfigured，ugly，grossproportions，mutation，disfigured，deformed，(mutation)，(child:1.2)，b&w，fat，extranipples，minimalistic，nsfw，lowres，badanatomy，badhands，text，error，missingfingers，extradigit，fewerdigits，cropped，worstquality，lowquality，normalquality，jpegartifacts，signature，watermark，username，blurry，disfigured，kitsch，ugly，oversaturated，grain，low-res，Deformed，disfigured，poorlyrawnface，mutation，mutated，extralimb，ugly，poorlydrawnhands，missinglimb，floatinglimbs，disconnectedlimbs，malformedhands，blur，outoffocus，longneck，longbody，ugly，disgusting，poorlydrawn，childish，mutilated，mangled，old，surreal，text，b&w，monochrome，conjoinedtwins，multipleheads，extralegs，extraarms，meme，elongated，twisted，fingers，strabismus，heterochromia，closedeyes，blurred，watermark，wedding，group，darkskin，dark-skinnedfemale，tattoos，nude，lowres，badanatomy，badhands，text，error，missingfingers，extradigit，fewerdigits，cropped，worstquality，lowquality，normalquality，jpegartifacts，signature，watermark，username，blurry"。中文译文为: ((3d, 渲染，例如：绘画，素描，卡通，动漫，漫画 1.2))，糟糕的解剖结构，糟糕的手，文字，错误，缺失的手指，多余的数字，更少的数字，裁剪，最差的质量，签名，水印，用户名，模糊，艺术家的名字，(长体)，糟糕的解剖结构，液体，畸形，突变，糟糕的比例，不协调的身体，不自然的身体，毁损，丑陋，粗大的比例。突变，毁损，变形，(突变)，(儿童：1.2)，黑与白，脂肪，多余的乳头，极简主义，不适宜工作场所，低分辨率，糟糕的解剖结构，糟糕的手，文字，错误，缺失的手指，多余的数字，更少的数字，裁剪，最差的质量、低质量，正常质量，jpeg 伪影，签名，水印，用户名，模糊，毁容，媚俗，丑陋。过饱和，纹理，低分辨率，变形，毁容，没画好的脸，突变，突变，多余的肢体，丑陋，没画好的手，缺失的肢体，漂浮的肢体，断开的肢体，畸形的手，模糊，失焦，长脖子，长身体，丑陋，恶心，画得不好，幼稚，残缺，支离破碎，显老。超现实的，文本。黑和白单色，连体双胞胎，多个头部，多余的腿，多余的手臂，模因，拉长，扭曲，手指，斜视，异色，闭上眼睛，模糊，水印，婚礼，团体，深色皮肤，深色皮肤的女性，纹身，裸体，低分辨率，糟糕的解剖结构，糟糕的手，文字，错误，缺失的手指，多余的数字，少的数字，裁剪，最差的质量，低质量，正常质量，Jpeg 伪影，签名，水印，用户名，模糊。其中，反向提示词中的"((3d，render，cg，painting，drawing，cartoon，anime，comic:1.2))"系其自行编辑外，其余所有的反向提示词均系其直接复制于某论坛中用户分享的提示词内容。

4. Enter prompts: "(ultraphotorealistic:1.3)，extremelyhighqualityhighdetailRAWcolorphoto，inlocations，japanidol，highlydetailedsymmetricalattractiveface，angularsimmetricalface，perfectskin，skinpores，dreamyblackeyes，reddish-brownplaitshairs，uniform，longlegs，thighhighs，softfocus，(filmgrain，vividcolors，filmemulation，kodakgoldportra100，35mm，canon50f1.2)，LensFlare，GoldenHour，HD，Cinematic，BeautifulDynamicLighting". [Followed by Chinese translation in the original text] Enter negative prompts: "((3d，render，cg，painting，drawing，cartoon，anime，comic:1.2))，badanatomy，badhands，text，error，missingfingers，extradigit，fewerdigits，cropped，worstquality，signature，watermark，username，blurry，artistname，(longbody)，badanatomy，liquidbody，

ma1formed，mutated，badproportions，uncoordinatedbody，unnaturalbody，disfigured，ugly，grossproportions，mutation，disfigured，deformed，(mutation)，(child:1.2)，b&w，fat，extranipples，minimalistic，nsfw，lowres，badanatomy，badhands，text，error，missingfingers，extradigit，fewerdigits，cropped，worstquality，lowquality，normalquality，jpegartifacts，signature，watermark，username，blurry，disfigured，kitsch，ugly，oversaturated，grain，low-res，Deformed，disfigured，poorlyrawnface，mutation，mutated，extralimb，ugly，poorlydrawnhands，missinglimb，floatinglimbs，disconnectedlimbs，malformedhands，blur，outoffocus，longneck，longbody，ugly，disgusting，poorlydrawn，childish，mutilated，mangled，old，surreal，text，b&w，monochrome，conjoinedtwins，multipleheads，extralegs，extraarms，meme，elongated，twisted，fingers，strabismus，heterochromia，closedeyes，blurred，watermark，wedding，group，darkskin，dark-skinnedfemale，tattoos，nude，lowres，badanatomy，badhands，text，error，missingfingers，extradigit，fewerdigits，cropped，worstquality，lowquality，normalquality，jpegartifacts，signature，watermark，username，blurry" [Followed by Chinese translation in the original text] Among the negative prompts, "((3d，render，cg，painting，drawing，cartoon，anime，comic:1.2))" were entered by the Plaintiff, but all other negative prompts were copied and pasted by the Plaintiff from some anonymous user's shared content in an online forum.

5. 将迭代步数修改为 33，高度修改为 768，提示词引导系数修改为 9，随机数种子修改为 2692150200，点击"生成"按键。操作界面如图 2 所示，生成结果如图 3 所示。

5. Change the Steps index to 33, Height index to 768, CFD Scale to 9, Random Seed index to 2692150200, and click the "generate" button. See Image 2 for the user interface. See Image 3 for the generated image.
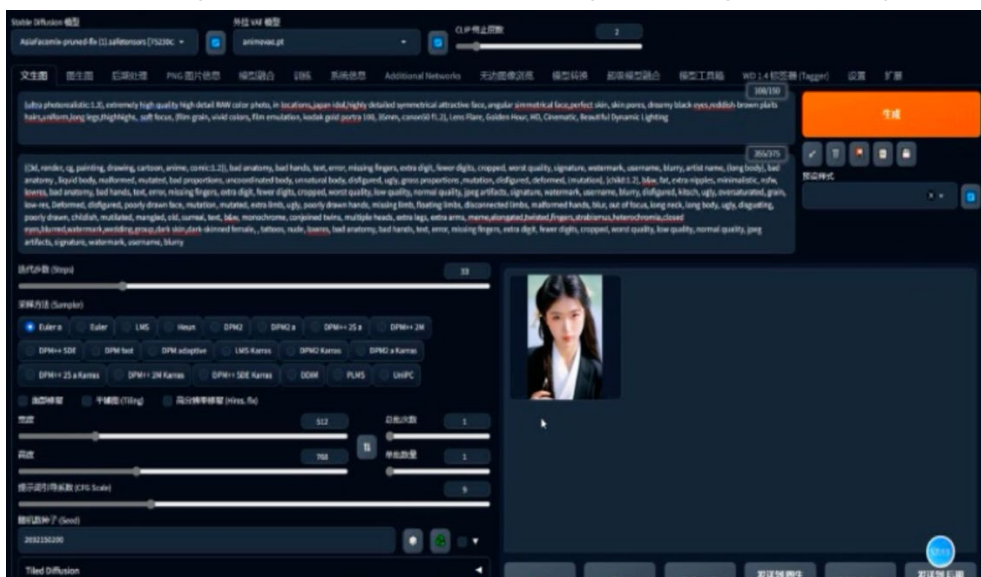
(Image 2)

(Image 3)

6. 在上述参数不变的情况下，将"Additiona1-Networks"中的模型 lord-hanfugirl-v1-5.safetensors"的权重修改为 0.75。生成结果如图 4 所示。

6. Based on the aforementioned parameter, change the Weight index of the "lord-hanfugirl-v1-5.safetensors" model in "Additiona1-Networks" to 0.75. See Image 4 for the generated image.

(Image 4)

7. 在上述参数不变的情况下，将随机种子修改为 2692150199。生成结果如图 5 所示。

7. Based on the aforementioned parameter, change the Random Seed index 2692150199. See Image 5 for the generated image.
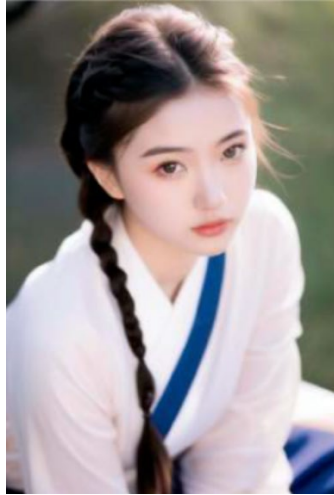
(Image 5)

8. 在上述参数不变的情况下，在正向提示词(Prompt)增加"shy，elegent，cute，lust，coolpose，teen，viewingatcamera，masterpiece，bestquality"，中文译文为：害羞、优雅、可爱、情欲、酷姿势、青少年、机前浏览、杰作、最佳质量。生成结果如图 6 所示，该图片即涉案图片。

8. Based on the aforementioned parameter, add "shy, elegent, cute, lust, coolpose, teen, viewingatcamera, masterpiece, bestquality" to the Positive Prompt. [Followed by Chinese translation in the original text] See Image 6 for the generated image, which is the allegedly infringing image here.

(Image 6)

经当庭勘验，原告通过变更个别提示词或者变更个别参数，其生成的图片结果不同。

As a result of this court's inspection, we find that the Plaintiff has obtained different generated results via changing certain prompts and parameters.

原告主张涉案图片为美术作品,如果法院认为不构成美术作品,则主张其为"符合作品特征的其他智力成果"。原告认为涉案图片在以下几方面体现出独创性，构成美术作品：

The Plaintiff claims that the allegedly infringing image is a work of art. If the court disagrees with the fact that the image constitutes an artwork, the Plaintiff then claims that the image is an "intellectual work that satisfies the elements of a work of art." The Plaintiff believes the allegedly infringing image is creative and constitutes a work of art due the following reasons:

第一为模型的选择及选取。从 StableDiffution 软件的绘画原理上，其本质为通过模型对已经高度模糊的马赛克画面结合用户输入的提示词进行解读并创作，模型能够决定画面最终生成的可用素材，影响作品的整体艺术类型、画面风格等。目前网络上开源作者们免费提供的模型高达数万个，都可以通过网络公开下载，因此在创作时所依据的模型由用户自由选取，具体使用何种模型是根据用户的审美趣味所决定。

The first reason is the selection of the model. Based on the illustration principles of the Stable Diffusion software, which is inherently a creation process that combines highly blurry mosaic images with user's prompts, models decide the appropriate materials used for the final image, affecting the work's artistic category, style, etc. Currently, there are more than ten thousand models provided by open-source users free of charge. Any user can download these models from the Internet; Therefore, users can freely select models during their creative processes according to different tastes and aesthetics.

第二为提示词及反向提示词的输入。从输入的提示词词汇来看，原告所选择的提示词的框架为：艺术类型+主体+环境+构图+风格。其中艺术类型指的是作品类型，比如水彩画、插画、像素艺术、电影艺术等；主体可以是人，也可以是物体、动物等；环境指的是主体所在的环境，可以是各种自然环境，或者灯光效果等；构图指的是镜头的焦点在哪里，主体的朝向是哪里；风格包含几个方面的元素，比如年代、参照的艺术家。涉案图片中，原告输入提示词时希望展现的一幅在黄昏的光线条件下具有摄影风格的美女特写，传达原告的审美倾向。因此提示词中的艺术类型为"超逼真照片""彩色照片"，主体为"日本偶像"并详细描绘了脸部细节如皮肤、眼睛、辫子等，环境为"外景""黄金时间"(日落前的一个小时是光线最好的时刻)"动态灯光"，构图为"酷姿势""机前浏览"(原意为看着镜头)，风格为"胶片纹理""胶片仿真"等。相关提示词为原告根据创作需要自行选择并输入，能够体现出原告的取舍、选择、安排和设计。

The second reason is the entry of positive and negative prompts. The prompts that the Plaintiff has selected are based on a framework: artistic genre + subject + environment + composition + style. The artistic genre means the type of artistic work, such as watercolor, illustration, pixel art, film, etc. The subject could be a human being, or it could be an object or an animal, etc. The environment means the environment where the subject is located, and it could be any natural scenery or light effects. The composition means where the focal point is and where the subject is facing, and the style incorporates elements such as time period and referencing artists. When generating the allegedly infringing image, the Plaintiff entered prompts in hope of creating a photographic portrait of a beautiful girl at dusk to express their aesthetics and taste. Therefore, the prompts included terms such as "ultra-photorealistic" and "color photo." They used prompts such as "Japan idol" to describe the subject's facial detail, such as skin texture, eyes, and braids. They used "outside," "golden hour" (the hour before sunset has the best lighting), and "dynamic lighting" to describe the environment, and they used "cool pose" and "on-board browsing" (the original meaning is looking at the camera) to describe the composition. They also used "film grain," "film emulation," etc. to describe the style. The corresponding prompts were selected and entered based on the Plaintiff's creative needs, and the prompts embody the Plaintiff's artistic efforts in choice, selection, arrangement, and design.

而反向提示词，主要特别强调了不希望在作品中出现的艺术类型、主体、环境、风格等要素。涉案作品为照片风格，因此原告在反向描述词特别添加"绘画""卡通""动漫"等不希望出现在作品内的提示词，这也是原告根据自身创作经验所添加的。

The negative prompts emphasized the undesired elements of genre, subject, environment, style, etc. The allegedly infringing image has a photographic style because the Plaintiff entered negative prompts such as "illustration," "cartoon," "animation," and other descriptive wordings that they did not want to be a part of the work. The negative prompts were derived from the Plaintiff's personal creative experience.

第三为相关生成参数。参数主要包含采样方法、清晰度、引导系数等，不同参数的设置可能产生不同的绘画结果。例如原告发现长宽比会影响真人类的照片作品结果，长宽比 1:1 为真人特写，长宽比 3:2 为半身照片，长宽比 2:1 为全身照片，长宽比 1:2 则可能出现两个人物等，该等系数均系原告经过多次使用实验得出，也凝结了原告的智力劳动结果，体现了原告的独创性。

The third reason is the parameters in relation to image-generation. The parameters involved sampling methods, clarity, CFG scale, etc. Different parameters created diverse results in the resulting imagery. For example, the Plaintiff noticed that the length-and-width-ratio impacts the final result of a photographic imagery that has a human subject. A ratio of 1:1 may generate human portraits, a ratio of 3:2 may generate upper body portraits, a ratio of 2:1 may generate full-body portraits, and a ratio of 1:2 may generate two human subjects, etc. The Plaintiff obtained the aforementioned indexes through trial and error, and the parameters are the result of the Plaintiff's intellectual labor that expresses individuality and creativity.

因此，原告认为从模型的选择及选取、提示词及反向提示词的输入、生成参数的设置均可以体现出原告的取舍、选择、安排和设计，凝结了原告的智力劳动，其显然具有独创性。特别是从客观主义标准来看，涉案图片显然符合作品的特征，原告在发布在小红书上后被众多用户观看、点赞，说明以一般社会公众的标准可以认定其为作品，具有独创性。

Hence, the Plaintiff believes that selecting and choosing the model, positive and negative prompts, and parameters, all demonstrate their creative choice, selection, arrangement, and design, which are the crystallization of the Plaintiff's intellectual labor that are clearly unique and creative. Especially from the view of an objective standard, the allegedly infringing image clearly satisfies the characteristics of a work of art. The Plaintiff published the image on the "Little Red Book" for the public to view and "give likes," which indicates that the work satisfies the public's standard of originality. In particular, from the perspective of objective standards, the disputed image clearly conforms to the characteristics of the works. After the Plaintiff published it on Little Red Book, it has been viewed and liked by numerous users, which shows that the picture can be identified as a work of originality by the standards of the general public.

被告系百家号账号"我是云开日出"(百家号 ID:)的注册者和使用者，截至 2023 年 3 月 17 日，该账号共获赞 21 万，有 4.6 万粉丝。2023 年 3 月 2 日，被告通过该账号发布了名为《三月的爱情，在桃花里》的文章，该文章文字内容系被告自己撰写的诗歌，共使用了 5 张图片作为配图，第一张配图即为涉案图片，涉案图片上未显示水印。该文章评论数为 26，文章底部载有："诗文原创/我是云开日出，图剪映/我是云开日出，素材来自网络侵删致歉。"经询，被告不能说明图片具体来源。

The Defendant is a registrant and user of an account "I Am the Sunrise After the Clouds Dissipate" (Baijiahao ID:), which had received 210,000 likes and 46,000 fans by March 17, 2023. On March 2, 2023, the Defendant posted an article named "Love in March, in Peach Blossoms" through the account, the text of which was a poem written by the Defendant himself. A total of five pictures were used as the captions. The first captioned picture was the disputed image which did not show a watermark. The number of comments on the article was 26. At the bottom of the article, it was stated that: "Original poem/I Am the Sunrise After the Clouds Dissipate, clipped picture/I Am the Sunrise After the Clouds Dissipate, source materials from the Internet. I will delete upon infringement notice and apologize." Upon inquiry, the Defendant could not explain the specific source of the picture.

原告主张被告截去了其在小红书平台的署名水印，为此提交了涉案图片自小红书下载过程的视频，该视频显示：涉案图片下载后再次打开查看时，图片上会载有"小红书"及""水印，其中"小红书"为平台名称，""为小红书平台分配给用户的编号。经询，被告表示不记得是否去除过涉案图片的水印。

The Plaintiff claimed that the Defendant had clipped off its signature/watermark on the Little Red Book platform, by submitting a video of the disputed image being downloaded from Little Red Book. The video showed that when the disputed image was opened for check again after being downloaded, there were watermarks of "Little Red Book" and "", in which "Little Red Book" was the platform name, and "" was the number assigned by the Little Red Book platform to the user. Upon inquiry, the Defendant stated that he could not recall whether he had removed the watermark of the disputed image.

原告认为被告未经其许可使用涉案图片且截去了其在小红书平台的署名水印，侵害原告对涉案图片享有的署名权和信息网络传播权。

The Plaintiff held that the Defendant used the disputed image without its permission and clipped its signature/watermark on the Little Red Book platform, which infringed the Plaintiff's right of authorship and right of communication through information network.

另查，原告提交 GitHub 社区"stablediffusion"的"CreativeMLOpenRATL++-MLicense"，内容为 "6.TheOutputYouGenerate.Exceptassetforthherein   , LicensorclaimsnorightsintheOutputYougenerateusingtheModel.YouareaccountablefortheOutputyougenerateanditssu bsequentuses.Nouseoftheoutputcancontraveneanyprovisionasstatedinthelicense."中文译文为：6.生成的输出。除非 在本许可证中另有规定，许可证人不对您使用模型生成的输出声称任何权利。您对生成的输出及其后续使 用负有责任。输出的使用不得违反许可证中的任何规定。

In addition, the Plaintiff submitted "CreativeMLOpenRATL++-Mlicense" of "S" in the GitHub community, with the content of "6. The Output You Generate. Except as set forth herein, Licensor claims no rights in the Output You generate using the Model. You are accountable for the Output you generate and its subsequent uses. No use of the output can contravene any provision as stated in the license."

经询，原告表示其主张经济损失的依据为法定赔偿，考量了学习软件成本、原告的智力投入、涉案图片的美 感、被告粉丝数量和侵权情节等因素。

Upon inquiry, the Plaintiff stated that the basis for its claim for economic losses was statutory compensation, in which factors such as the cost of learning software, the Plaintiff's intelligence investment, the aesthetic appeal of the disputed image, the number of the Defendant's fans, and the circumstances of the infringement were taken into consideration.

被告主张 AI 生成图片市场交易价格较低，提交以下证据：
Alleging that the market price of AI-generated images is low, the Defendant submitted the following evidence:

1.闲鱼平台商品信息截图，显示商品"12000+张 AI 美女图片素……"售价 9.9 元；商品"近 2 万余张 AI 人物 图片素……"售价 4.99 元；商品"3 元一组 AI 代出图，单发一……"售价 3 元。
1. Screenshots of product information on the "Goofish (Xianyu)" (second-hand goods online platform), showing that the price of the item "Over 12000 AI-Generated Images of Beautiful Women ..." is CNY9.9 (approximately USD 1.4); the price of the item "Nearly 20,000 AI-Generated Character Images..." is CNY4.99 (approximately USD 0.7); and the price of the item "AI-Generated Images, CNY3 Per Set, Single Release..." is CNY3 (approximately USD 0.4);

2.拼多多平台商品信息截图，商品"ai 头像定制真人照片 3D 人像动漫 Q 版卡通转手绘头像制作迪士尼风格" 售价 5 元起。
2. Screenshot of product information on the "Pinduoduo" (e-commerce platform). The price of the item "AI-Customized Avatars from Real Photos, 3D Portraits, Anime, Chibi Cartoon Style to Hand-Drawn Avatar Creation in Disney Style" starts from CNY5 (approximately USD 0.7).

3.知乎用户"圈圈"文章截图"100 张 AI 美女壁纸图片，无水印自取"；涉案图片体现了原告的智力投入，故涉 案图片具备了"智力成果"要件。
3. Screenshot from Zhihu user QuanQuan's article titled "100 AI-Generated Beautiful Women Wallpapers, watermark-free and available for download." The disputed image reflects the Plaintiff's intellectual input, and therefore the image possesses the element of "intellectual achievements".

4.图虫网截图，显示：1 张图片售价为 40 元、5 张图片售价为 130 元、10 张图片售价为 230 元。
4.Screenshots of product information on the "Tuchong" (image platform), showing that the price of one image is CNY 40 (approximately USD 5.6); the price of five images is CNY 130 (approximately USD 18.2); and the price of

10 images is CNY 230 (approximately USD 32.2).

以上事实，有涉案图片的原始电子文件、小红书截图、涉案图片生成过程复现视频、小红书下载过程视频、咸鱼平台截图、拼多多平台截图、知乎文章截图、图虫网截图等证据，当事人陈述及庭前会议笔录、庭审笔录等在案佐证。

The aforementioned facts are corroborated by evidence including the original electronic file of the disputed image, screenshots from Little Red Book, videos replicating the process of generating the disputed image, videos of downloading from Little Red Book, screenshots from the Goofish platform, screenshot from the Pinduoduo platform, screenshot of the article from Zhihu, screenshots from the Tuchong website, and other relevant evidence. This is further supported by the statements of the parties involved, written records of the pre-trial conferences, and written records of the court proceedings.

本院认为，根据原、被告的诉辩意见和查明的事实，本案的争议焦点为：一、"春风送来了温柔"图片是否构成作品，构成何种类型作品；二、原告是否享有涉案图片的著作权；三、被诉行为是否构成侵权行为，被告是否应当承担法律责任。对上述争议焦点，本院分别予以评判。

The Court held that, based on the pleadings of the Plaintiff and the Defendant and the facts ascertained, the core issues of dispute in this case are: (1) whether the picture "Tenderness Sent by the Spring Breeze" constitutes a work and, if so, what type of work it constitutes; (2) whether the Plaintiff has the copyright over the disputed image; and (3) whether the actions in dispute constituted an infringement and whether the Defendant should assume legal liability. This court will adjudicate on the above issues of dispute individually respectively.

一、"春风送来了温柔"图片是否构成作品，构成何种类型作品?
I. Does the "Tenderness Sent by the Spring Breeze" image constitute a work, and if so, what type of work does it constitute?

《中华人民共和国著作权法》(以下简称著作权法)第三条规定："本法所称的作品，是指文学、艺术和科学领域内具有独创性并能以一定形式表现的智力成果。"根据上述规定，审查原告主张著作权的客体是否构成作品，需要考虑如下要件：1.是否属于文学、艺术和科学领域内；2.是否具有独创性；3.是否具有一定的表现形式；4.是否属于智力成果。本案中，从涉案图片的外观上来看，其与通常人们见到的照片、绘画无异，显然属于艺术领域，且具有一定的表现形式，具备了要件 1 和要件 3。

Article 3 of the Copyright Law of the People's Republic of China (hereinafter referred to as the "Copyright Law") stipulates that: "For purposes of this Law, the term 'works' means intellectual achievements in the fields of literature, art and science, which are original and can be expressed in a certain form." Based on the above provision, the following factors shall be considered in the examination of whether the object for which copyright is claimed by the Plaintiff constitutes a work: (1) whether it belongs to the fields of literature, art and science; (2) whether it possesses originality; (3) whether it has a certain form of expression; and (4) whether it is an intellectual achievement. In this case, based on the appearance of the disputed image, it is no different from the ordinary photographs or paintings observed by the public. It obviously belongs to the field of art, and it has a certain form of expression, fulfilling elements 1 and 3.

关于"智力成果"要件，"智力成果"是指智力活动的成果。因此，作品应当体现自然人的智力投入。本案中，原告发布涉案图片时已经标注为"AI 插画"，且原告可以利用 StableDiffusion 模型根据自己设定的提示词和参数还原该图片的生成过程，在无相反证据的情况下，可以认定涉案"春风送来了温柔"图片系原告利用生成式人工智能技术生成的。根据公开资料和相关调研显示，StableDiffusion 模型是由互联网上大量图片和其对

应文字描述训练而来，该模型可以根据文本指令，利用文本中包含的语义信息与图片中包含的像素之间的对应关系，生成与文本信息匹配的图片。该图片不是通过搜索引擎调用已有的现成图片，也不是将软件设计者预设的各种要素进行排列组合。通俗来讲，该模型的作用或者功能类似于人类通过学习、积累具备了一些能力和技能，它可以根据人类输入的文字描述生成相应图片，代替人类画出线条、涂上颜色，将人类的创意、构思进行有形呈现。本案中，原告希望画出一幅在黄昏的光线条件下具有摄影风格的美女特写，其随即在 StableDiffusion 模型中输入了提示词，提示词中艺术类型为"超逼真照片""彩色照片"，主体为"日本偶像"并详细描绘了人物细节如皮肤状态、眼睛和辫子的颜色等，环境为"外景""黄金时间""动态灯光"，人物呈现方式为"酷姿势""看着镜头"，风格为"胶片纹理""胶片仿真"等，同时设置了相关参数，根据初步生成的图片，又增加了提示词、调整了参数，最终选择了一幅自己满意的图片。从原告构思涉案图片起，到最终选定涉案图片止，这整个过程来看，原告进行了一定的智力投入，比如设计人物的呈现方式、选择提示词、安排提示词的顺序、设置相关的参数、选定哪个图片符合预期等等。

Regarding the element of "intellectual achievements," "intellectual achievements" refers to the results of intellectual activities. Therefore, the work should reflect the intellectual input of a natural person. In this case, the Plaintiff had marked the disputed image as "AI Illustration," and the Plaintiff was able to use the Stable Diffusion model to reproduce the generation process of the picture based on the prompts and parameters set by the Plaintiff. In the absence of contrary evidence, it can be determined that the disputed image "Tenderness Sent by the Spring Breeze" was generated by the Plaintiff using generative AI technology. According to public information and related research, the Stable Diffusion model is trained with a large number of images and their corresponding textual descriptions from the internet. This model can, according to text instructions, generate a picture that matches the text information by using the corresponding relationship between the semantic information contained in the text and the pixels contained in the image. The image is not an existing image invoked by a search engine, nor is it a permutation and combination of various elements preset by the software designer. In general terms, the role or function of the model is similar to that of human beings who have acquired certain abilities and skills through learning and accumulation. It can generate corresponding images according to the textual description input by humans, draw lines and apply colors on behalf of humans, and present human creativity and conception in a tangible form. In this case, the Plaintiff wanted to draw a close-up portrait of a beautiful woman with a photographic style in the light of dusk, and therefore entered a prompt into the Stable Diffusion model. The artistic type in the prompt was "ultra-photorealistic" and "color photo," the subject was "Japan idol" and described the details of the character, such as the color of his skin, eyes and braids, the environment was set as "outside," "golden hour" and "dynamic lighting," the presentation of the character was "cool pose" and "viewing at the camera," the style was "film grain" and "film emulation," and the relevant parameters were set. Based on the preliminary generated image, the Plaintiff added more prompts, adjusted parameters, and finally selected an image that met their expectations. From the moment the Plaintiff conceived the disputed image to the moment the Plaintiff finally selected the disputed image, it can be seen that the Plaintiff has carried out a certain amount of intellectual input, such as designing the presentation of the character, selecting the prompts, arranging the order of the prompts, setting the relevant parameters, selecting which picture meets their expectations, and so on.

当然，并非所有智力成果都是作品，只有具备"独创性"的智力成果才能构成作品。通常来讲，"独创性"要求作品由作者独立完成，并体现出作者的个性化表达。"机械性智力成果"应当被排除在外。比如按照一定的顺序、公式或结构完成的作品，不同的人会得到相同的结果，因表达具有唯一性，因此不具有独创性。而利用人工智能生成图片，是否体现作者的个性化表达，需要个案判断，不能一概而论。一般来说，人们利用 StableDiffusion 类模型生成图片时，其所提出的需求与他人越具有差异性，对画面元素、布局构图描述越明确具体，越能体现出人的个性化表达。本案中，从涉案图片本身来看，体现出了与在先作品存在可以识别的差异性。从涉案图片生成过程来看，一方面，虽然原告并没有动笔去画具体的线条，甚至也没有百分之百的告知 StableDiffusion 模型怎样去画出具体的线条和色彩，可以说，构成涉案图片的线条和色彩基本上是

StableDiffusion 模型"画"的，这与人们之前使用画笔、绘图软件去画图有很大的不同。但是，原告对于人物及其呈现方式等画面元素通过提示词进行了设计，对于画面布局构图等通过参数进行了设置，体现了原告的选择和安排。另一方面，原告通过输入提示词、设置相关参数，获得了第一张图片后，其继续增加提示词、修改参数，不断调整修正，最终获得了涉案图片，这一调整修正过程亦体现了原告的审美选择和个性判断。在庭审中，原告通过变更个别提示词或者变更个别参数，生成了不同的图片，可以看出，利用该模型进行创作，不同的人可以自行输入新的提示词、设置新的参数，生成不同的内容。因此，涉案图片并非"机械性智力成果"。在无相反证据的情况下，可以认定涉案图片由原告独立完成，体现出了原告的个性化表达。综上，涉案图片具备"独创性"要件。

Certainly, not all intellectual achievements qualify as works. Only those intellectual achievements that possess "originality" can constitute a work. Generally, "originality" requires that the work be independently created by the author and embody their unique personal expression. "Mechanical intellectual achievements" should be excluded. For instance, works completed by following a specific sequence, formula, or structure, which yield identical results regardless of who completes them, lack originality due to their uniform expression. The use of artificial intelligence to generate images, and whether it reflects the author's personal expression, requires case-by-case assessment and should not be generalized. Typically, when people use models like Stable Diffusion to generate images, the more their requests differ from others, and the clearer and more specific their descriptions of visual elements and composition, the more these images reflect their personal expression. In this case, the disputed image itself shows identifiable differences from earlier works. In its generation process, the Plaintiff did not physically draw the specific lines or fully direct the Stable Diffusion model on how to draw these lines and colors, and the lines and colors that constitute the disputed image were primarily "drawn" by the Stable Diffusion model. This is significantly different from traditional methods of drawing with brushes and graphics software. However, the Plaintiff designed the character and the portrayal through prompts, and arranged the composition and layout through parameters, reflecting the Plaintiff's choice and arrangement. Furthermore, after obtaining an initial image through prompts and parameters, the plaintiff added more prompts, adjusted parameters, and continually refined the image until the final disputed image was obtained. This process of adjustment and refinement also reflects the Plaintiff's aesthetic choice and personal judgment. During the trial, the Plaintiff generated different images by changing individual prompts or parameters, demonstrating that different individuals can use this model to generate varied content by inputting new prompts and setting new parameters. Therefore, the disputed image is not a "mechanical intellectual achievement." In the absence of contrary evidence, it can be assumed that the disputed image was independently completed by the Plaintiff and reflects the Plaintiff's personal expression. In conclusion, the disputed image has the elements of "originality."

当前，新一代生成式人工智能技术正在被越来越多的人用来进行创作。StableDiffusion 模型和与之类似功能的模型，可以根据文字描述生成精美图片。包括没有绘图技艺的人士在内，很多人在尝试运用这些新的模型来生成内容，把自己的创意、设计进行有形呈现，使创作图片的效率大幅提高。应当讲，生成式人工智能技术让人们的创作方式发生了变化，这与历史上很多次技术进步带来的影响一样，技术的发展过程，就是把人的工作逐渐外包给机器的过程。照相机产生之前，人们需要运用高超的绘画技艺才能再现客观物体形象，而照相机的产生让客观物体形象可以更简单地被记录，现在，智能手机的照相功能越来越强大，使用越来越简单，但是只要运用智能手机拍摄的照片体现出了摄影师的独创性智力投入就仍然构成摄影作品，受到著作权法保护。由此可见，技术越发展，工具越智能，人的投入就越少，但是这并不影响我们继续适用著作权制度来鼓励作品的创作。在上述人工智能模型出现以前，人们需要花费时间精力去学习一定的绘画技能，或者需要委托他人，才能获得一幅绘画作品。在委托他人绘画的场景下，委托人会提出一定的需求，受托人根据委托人的需求动笔去画出线条、填充色彩进而完成一幅美术作品。在委托人与受托人之间，一般来讲，动笔去画画的受托人被认为是创作者。这种情形与人利用人工智能模型生成图片的情形类似，但是两者有一个

重大的区别，即受托人有自己的意志，其在完成委托人委托的绘画工作时，会在绘画中融入自己的取舍和判断。而现阶段，生成式人工智能模型不具备自由意志，不是法律上的主体。因此，人们利用人工智能模型生成图片时，不存在两个主体之间确定谁为创作者的问题，本质上，仍然是人利用工具进行创作，即整个创作过程中进行智力投入的是人而非人工智能模型。鼓励创作，被公认为著作权制度的核心目的。只有正确地适用著作权制度，以妥当的法律手段，鼓励更多的人用最新的工具去创作，才能更有利于作品的创作和人工智能技术的发展。在这种背景和技术现实下，人工智能生成图片，只要能体现出人的独创性智力投入，就应当被认定为作品，受到著作权法保护。

Currently, a new generation of generative AI technology is increasingly being used for creation. Models like Stable Diffusion can generate exquisite pictures based on textual descriptions. Many people, including those with no drawing skills, are trying to use these new models to generate content, to show their creativity and design in a tangible form, significantly increasing the efficiency of creating images. It should be said that generative AI technology changes the way people create, similar to the impact of many historical technological advancements. The process of the development of technology is the process of gradually outsourcing human work to machines. Before the camera came into being, people had to use advanced drawing skills to reproduce the images of objective objects. The advent of the camera allowed the images of objective objects to be recorded more easily. Smartphones are becoming more powerful and easier to use, but as long as the photo taken reflects the photographer's original and intellectual input, it still constitutes a photographic work and is protected by copyright law. This shows that as technology develops, and tools become more intelligent, less human input is required. But this does not affect us to continue applying the copyright system to encourage the creation of works. Before the emergence of AI models, people had to spend time and effort to learn certain painting skills or had to commission others to obtain a painting. In scenarios where someone commissions a painting, the client will set certain requirements, and the commissioned artist (the trustee) will create the artwork by drawing lines and filling colors based on these requirements. Between the client and the trustee, generally, the trustee who starts to paint is regarded as the creator. This scenario is similar to using AI models to generate images, but there is a major difference between the two. The commissioned artist has their own will and integrates their choices and judgments into the painting. By contrast, current generative AI models do not possess free will and are not legal entities. Therefore, when people use AI models to generate images, the issue of determining who is the creator as between two entities does not arise. In essence, it is still human beings using tools to create, where the intellectual input in the creative process is from the human, rather than the AI models. Encouraging creation is recognized as the core purpose of the copyright system. Only by correctly applying the copyright system and encouraging more people to create with the latest tools through appropriate legal means can we promote the creation of works and the development of AI technology. In this background and technological reality, images generated by AI, as long as they reflect the original intellectual input of a person, should be identified as a work and protected copyright law.

综上所述，涉案图片符合作品的定义，属于作品。具体到构成何种类型作品，原告主张涉案"春风送来了温柔"图片为美术作品，如果法院认为其不构成美术作品，则主张其为"符合作品特征的其他智力成果"。司法实践中，判断客体的作品类型时，首先需要判断其是否为著作权法明确列举的作品类型，即根据客体的特征以及表达，与著作权法第三条前八项列举的作品类型的特征与要件进行对比比较，如果该客体可以被包含在前八项所列举的作品类型中，就将其认定为明确的作品类型，不再适用第九项"符合作品特征的其他智力成果"条款。根据《中华人民共和国著作权法实施条例》第四条规定："美术作品，是指绘画、书法、雕塑等以线条、色彩或者其他方式构成的有审美意义的平面或者立体的造型艺术作品。"本案中，涉案图片是以线条、色彩构成的有审美意义的平面造型艺术作品，属于美术作品。同时，涉案图片在可以归属到具体作品类型时，没有适用"其他作品条款"保护的必要性，其不属于"符合作品特征的其他智力成果"。综上，涉案图片属于美术作品，受到著作权法的保护。

In summary, the disputed image meets the definition of a work and thus constitutes a work. In terms of what type of work is constituted, the Plaintiff claimed that the "The Tenderness Sent by the Spring Breeze" image is a work of fine art. If the court does not consider it a work of fine art, the plaintiff asserts that it should be classified as "other intellectual achievements conforming to the characteristics of the works." In judicial practice, when determining the type of the object of the work, it should be determined firstly whether it falls into the types of works expressly listed in the Copyright Law, i.e., based on the characteristics and expression of the object, comparison shall be made between the characteristics and elements of the types of works listed in the first eight clauses of Article 3 of the Copyright Law. If such object can be included in the types of works listed in the first eight clauses, then it is determined as a specific type of work and the clause "other intellectual achievements conforming to the characteristics of the works" in the ninth clause shall no longer apply. Article 4 of the Implementation Regulations for the Copyright Law stipulates that "artistic works shall include paintings, calligraphy, sculptures and other flat or three-dimensional aesthetic works created with the use of lines, colors or other patterns." In this case, the disputed image is a two-dimensional aesthetic work composed of lines and colors, and it falls under the category of fine art works. Meanwhile, when the disputed image can be attributed to a specific type of work, there is no need to apply the "other works clause" for protection and it does not fall under "other intellectual achievements conforming to the characteristics of the works." Therefore, the disputed work is a work of fine art and is protected by the Copyright Law.

二、原告是否享有涉案图片的著作权
II. Does the Plaintiff have the copyright over the disputed image?

著作权法第十一条第一款规定："著作权属于作者，本法另有规定的除外。"关于"作者"，著作权法第十一条规定："创作作品的自然人是作者。由法人或者非法人组织主持，代表法人或者非法人组织意志创作，并由法人或者非法人组织承担责任的作品，法人或者非法人组织视为作者。"根据该条规定，作者限于自然人、法人或非法人组织，这与民法典规定的民事主体一致。故人工智能模型本身无法成为我国著作权法上的作者。正因如此，虽然涉案图片是涉案人工智能模型所"画"，但是该模型无法成为涉案图片的作者。

Paragraph 1 of Article 11 of the Copyright Law stipulates that, "unless otherwise provided by this Law, the copyright in a work shall belong to its author." Regarding the term "author/" Article 11 of the Copyright Law stipulates that, "the author of a work is a natural person who creates the work. Where a work is created under the auspices of, representing the will, and under the responsibility of a legal person or unincorporated organization, such a legal person or unincorporated organization shall be deemed the author of the work." Pursuant to this article, authors are limited to natural persons, legal persons or unincorporated organizations, which is consistent with the definition of civil subjects under the Civil Code. Therefore, the AI model itself cannot become the author of the work in China's Copyright Law. Therefore, although the disputed image is "drawn" by the AI model, the model cannot be the author of the disputed image.

而涉案人工智能模型设计者既没有创作涉案图片的意愿，也没有预先设定后续生成内容，其并未参与到涉案图片的生成过程中，于本案而言，其仅是创作工具的生产者。其通过设计算法和模型，并使用大量数据"训练"人工智能，使人工智能模型具备面对不同需求能自主生成内容的功能，在这个过程中必然是进行了智力投入，但是设计者的智力投入体现在人工智能模型的设计上，即体现在"创作工具"的生产上，而不是涉案图片上。故涉案人工智能模型设计者亦不是涉案图片的作者。

However, the designer of the AI model neither intended to create the disputed image, nor predetermined the content to be generated subsequently. He did not participate in the generation process of the disputed image. In this case, he is just the producer of the creation tool. By designing algorithms and models, and "training" the artificial intelligence

with large amounts of data, the AI model can automatically generate content in the face of different needs. In this process, the designer must have made intellectual input. However, the designer's intellectual input is reflected in the design of the AI model, which is embodied in the production of the "creation tool," but not in the disputed image. Hence, the designer of the AI model is not the author of the disputed image.

此外，本案中，从相关主体的约定来看，根据在案证据，涉案人工智能模型的设计者，在其提供的许可证中表示，"不主张对输出内容的权利"，可以认定设计者亦对输出内容不主张相关权利。
In addition, in this case, in terms of the agreement between the relevant parties, according to the documented evidence, the designer of the AI model stated in the license it provided that it "does not claim any right to the output contents," so it can be determined that the designer also does not claim any relevant right to the output contents.

如前所述，原告是直接根据需要对涉案人工智能模型进行相关设置，并最终选定涉案图片的人，涉案图片是基于原告的智力投入直接产生，且体现出了原告的个性化表达，故原告是涉案图片的作者，享有涉案图片的著作权。
As previously mentioned, the Plaintiff is the person who directly set up the AI model based on its needs and ultimately selected the subject picture. The subject picture is produced directly based on the Plaintiff's intellectual input and reflects the Plaintiff's personal expression. Therefore, the Plaintiff is the author of the subject picture and owns the copyright of the subject picture.

需要说明的是，虽然本案中本院认定，原告作为作者享有著作权，但是根据诚实信用原则和保护公众知情权的需要，原告应该显著标注其使用的人工智能技术或模型。本案中，原告以"AI 插画"方式进行标注，已经足以让公众知晓该内容为原告利用人工智能技术生成，本院对此予以肯定。
It should be noted that, although this court ruled that the Plaintiff, as the author of the disputed image, is entitled to the copyright, the Plaintiff should clearly indicate the AI technology or model used according to the principle of good faith and the need to protect the public's right to information. In this case, the Plaintiff's annotation by way of "AI illustration" is sufficient to inform the public that the disputed image is generated by the Plaintiff through AI technology. Therefore, this court affirms this approach.

三、被诉行为是否构成侵权，被告是否应当承担法律责任
III. Whether the actions in dispute constituted an infringement and whether the Defendant should assume legal liability?

本案中，原告认为被告未经其许可使用涉案图片且截去了其在小红书平台的署名水印，侵害原告对涉案图片享有的署名权和信息网络传播权。
In this case, the Plaintiff held that the Defendant used the disputed image without its permission, cut off its signature watermark on the Little Red Book platform, and infringed the Plaintiff's right of authorship and right of information network dissemination.

著作权法第十条规定："信息网络传播权，即以有线或者无线方式向公众提供，使公众可以在其选定的时间和地点获得作品的权利"。本案中，被告未经许可，使用涉案图片作为配图并发布在自己的账号中，使公众可以在其选定的时间和地点获得涉案图片，侵害了原告就涉案图片享有的信息网络传播权。
Article 10 of the Copyright Law stipulates that: "The right of communication through information network is the right to make a work available to the public by wire or by wireless means, so that the public may have access to the work at time and place chosen by them." In this case, the Defendant, without permission, used the disputed image as

an illustration and published it on their account, allowing the public to access the disputed image at a time and place determined by the Defendant, which infringed the Plaintiff's right of communication through the information network regarding the disputed image.

著作权法第十条规定："署名权，即表明作者身份，在作品上署名的权利"。作者有权署真名，也有权署假名或者不署名。本案中，关于去除水印一节，根据原告提交的证据以及行业惯例，涉案图片从小红书平台上下载后应当加载有平台和用户编号的水印，而被告使用的被诉图片未显示有上述水印，可以推定上述水印已被消除，且被告作为被诉图片的使用者无法说明被诉图片的具体来源和去除水印相关情况，可以认定水印系被告去除。虽然该水印中的用户编号是平台分配，而添加水印的行为亦是平台实施，但因该用户编号与原告存在对应关系，该用户编号以水印的形式添加在涉案图片上，亦可起到表明其作者身份的作用。本案中，原告明确表示其选择该用户编号作为自己的署名，本院不持异议。因此，被告去除水印的行为，侵害了原告的署名权，应当承担侵权责任。

Article 10 of the Copyright Law provides that "the right of authorship is the right to claim authorship, and to have the author's name mentioned in connection with the work." An author has the right to use their real name, a pseudonym, or to remain anonymous. In this case, in respect of the section regarding the removal of the watermark, according to the evidence submitted by the Plaintiff and the industry practice, the disputed image, after being downloaded from the Little Red Book, should have a watermark containing the platform and user ID. However, the disputed image used by the Defendant did not show the aforementioned watermark, so it can be presumed that the watermark has been removed. In addition, the Defendant, as the user of the disputed image, cannot explain the specific source of the disputed image and relevant conditions concerning the removal of the watermark, so it can be also presumed that the watermark has been removed by the Defendant. Although the user ID in the watermark is assigned by the platform, and the act of adding the watermark is also implemented by the platform, the user ID corresponds to the Plaintiff and its inclusion in the disputed image as a watermark can serve to indicate the identity of the author. In this case, the Plaintiff has explicitly chosen this user ID as their signature, and the court had no objection to this. Therefore, the Defendant's act of removing the watermark infringed upon the Plaintiff's right of authorship, and the Defendant shall bear the liability for infringement.

综上，被告侵害了原告就涉案图片享有的署名权和信息网络传播权，应当承担赔礼道歉、赔偿损失等民事责任。

In summary, the Defendant infringed the Plaintiff's right of authorship and right of communication through information network of the disputed image, and the Defendant shall bear the civil liability including apology and compensation for losses.

对于原告"请求判令被告在涉案百家号发布公开声明向原告赔礼道歉，消除其侵权行为给原告造成的影响"这一诉讼请求，与被告行为给原告造成的影响范围相当，本院予以支持。

In respect of the Plaintiff's claim "to order the Defendant to issue a public statement of apology on Baijiahao to the Plaintiff to eliminate the impact of its act of infringement on the Plaintiff," the scope of impact is equivalent to the impact caused by the Defendant's act on the Plaintiff. Therefore, the court supports the claim.

著作权法第五十四条规定："侵犯著作权或者与著作权有关的权利的，侵权人应当按照权利人因此受到的实际损失或者侵权人的违法所得给予赔偿；权利人的实际损失或者侵权人的违法所得难以计算的，可以参照该权利使用费给予赔偿。权利人的实际损失、侵权人的违法所得、权利使用费难以计算的，由人民法院根据侵权行为的情节，判决给予五百元以上五百万元以下的赔偿。"本案中，根据在案证据，权利人的实际损失、侵权人的违法所得难以计算，关于涉案图片的权利使用费，被告虽然提交了一些网站的交易信息截图，但是

无法确定交易的图片与本案图片在独创性和使用方式上具有可比性，因此不能证明涉案图片的权利使用费数额。本院根据涉案图片情况以及侵权使用情节，确定被告就被诉侵权行为向原告赔偿的经济损失数额为 500 元。

Article 54 of the Copyright Law stipulates that, "in case of infringement upon the copyright or the copyright-related rights, the infringer shall make compensation on the basis of the actual loss suffered by the right owner or based on the illegal gains of the infringer; where the actual loss of the right owner or the illegal gains of the infringer are difficult to be calculated, compensation may be made by reference to the amount of royalties for that right. Where the actual loss of the right owner, the illegal gains of the infringer or the royalties are difficult to calculate, the people's court shall, in light of the circumstances of the infringement, decide on a compensation not less than CNY500 (approximately USD 70.1) but not more than CNY5,000,000 (approximately USD 701,163.9)." In this case, based on the evidence on record, it is difficult to calculate the actual losses of the rights holder and the illegal gains of the infringer. Regarding the royalties for the disputed image, although the Defendant submitted the screenshots of transaction information of some websites, it is unclear whether the images involved in these transactions are comparable in terms of originality and usage to the image in this case. Therefore, these submissions do not establish the royalty amount for the disputed image. Based on the circumstances of the disputed image and the nature of the infringement, this court rules that the Defendant shall compensate the Plaintiff for economic losses in the amount of CNY 500 due to the alleged infringement.

综上，依据《中华人民共和国著作权法》第十条第一款第二项、第十二项，第五十三条，第五十四条，本院判决如下：

In conclusion, based on the provisions of Article 10, Paragraph 1, Items 2 and 12, as well as Articles 53 and 54 of the Copyright Law, this court rules as follows:

一、被告刘某某于本判决生效之日起七日内，在涉案百家账号"我是云开日出"(百家号 ID:)上发布声明向原告李某某赔礼道歉，持续时间不少于 24 小时，以消除影响(声明内容须经本院审核，逾期不履行，本院将选择一家全国公开发行的报刊或在本院官方网站上，刊登本判决书的主要内容，费用由被告刘某某承担)；

I. The Defendant, Liu XX, should issue a public apology to the Plaintiff, Li, within 7 days upon effectiveness of the judgment, on the Baijiahao account "I Am the Sunrise After the Clouds Dissipate" (Baijiahao ID:) for a duration of no less than 24 hours to eliminate the impact (the statement shall be reviewed by this court. If the apology is not made within the specified time limit, this court will choose a nationally circulated newspaper or publish the main contents of the judgment on our official website at the expense of the Defendant, Liu);

二、被告刘某某于本判决生效之日起七日内赔偿原告李某某经济损失 500 元；

II. The Defendant Liu shall pay the Plaintiff Li an economic loss of CNY500 within 7 days as of the effective date of the judgment;

三、驳回原告李某某的其他诉讼请求。

III. Other claims of the Plaintiff Li are dismissed.

如未按本判决指定的期间履行给付金钱义务，应当依照《中华人民共和国民事诉讼法》第二百六十条之规定，加倍支付迟延履行期间的债务利息。

If the Defendant fails to perform the obligation of pecuniary payment within the period prescribed in this judgment, the Defendant shall, in accordance with Article 260 of the Civil Procedure Law of the People's Republic of China, pay double interest of the debt during the delayed performance period.

案件受理费 50 元，由被告刘某某负担(于本判决生效之日起七日内交纳)。

The case acceptance fee of CNY50 shall be borne by the Defendant, Liu (to be paid within 7 days from the effective date of this judgment).

如不服本判决，可以在判决书送达之日起十五日内，向本院递交上诉状，上诉于北京知识产权法院。

If you disagree with the judgment, you may file an appeal with this court within 15 days of the service of the judgment, and you may file an appeal with the Beijing Intellectual Property Court.

审判长 朱 阁
Presiding Judge: Zhu Ge

审判员 颜 君
Judge: Yan Jun

审判员 李婉星
Judge Li: Wanxing

二〇二三年十一月二十七日
November 27, 2023

法官助理 李绪青
Judicial Assistant: Li Xuqing

书记员 史 宸
Clerk: Shi Chen