U.S. AI and Copyright Protection Updates - The U.S. Copyright Office Session 2: Visual Arts

美国 AI 与版权保护动态 - 美国版权局第二次会议：视觉艺术专题

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On Tuesday, May 2, 2023, the U.S. Copyright Office (USCO) held the second of four sessions on the copyright implications of generative artificial intelligence (GAI), titled "Artificial Intelligence and Copyright – Visual Arts."

美国时间 2023 年 5 月 2 日周二，美国版权局（USCO）召开了"生成式人工智能（GAI）的版权影响"系列四次会议中的第二次会议，主题为"人工智能与版权：视觉艺术专题"。

The session focused on GAI issues relevant to visual works, and featured two panels with various stakeholders that brought a range of perspectives to the discussion. These panelists included representatives from GAI platform companies, graphic design software companies, think tanks, policy organizations, and law firms, as well as artists concerned by the impact of GAI.

本次会议集中讨论了与视觉作品相关的生成式人工智能议题，并设有由不同的利益相关者组成的两个小组，提出了一系列的观点。小组成员包括来自生成式人工智能平台公司、图形设计软件公司、智库、政策组织和律师事务所的代表，也包括关注生成式人工智能所带来的影响的艺术家们。

Two issues consistently arose during the course of the three-hour session:

本次会议共计三小时，对以下两个问题进行了反复讨论：

1. Authorship in the context of GAI
   生成式人工智能背景下的作者身份问题

2. Legality of "training" GAI platforms
   对生成式人工智能平台进行"训练"的合法性问题

Regarding authorship, many spoke out in favor of USCO's recent guidance on copyrightability of GAI works, and agreed with the general proposition that AI cannot be the "author" of a work. Others encouraged USCO to provide additional clarity on GAI works that contain a significant amount of human authorship. Still others questioned USCO's recent decision to partially rescind registration of Kashtanova's *Zarya of the Dawn*, a comic book with Midjourney-generated GAI images. In particular, Kashtanova's copyright counsel, who participated in the panel, questioned USCO's reasoning that Kashtanova could not have accurately predicted the visual outcomes of her text prompts, arguing that such "predictability" analysis was absent from USCO's recent guidance.

对于作者身份问题，许多与会者公开表示了对美国版权局最近关于生成式人工智能作品版权保护的指导意见的支持，并对人工智能无法成为作品的"作者"这一通说表示赞成。另一部分与会者则表示，希望美国版权局对人类创作者参与程度较高的生成式人工智能作品的版权问题进行进一步澄清。还有一部分与会者质疑了最近美国版权局部分撤销卡什塔诺娃的漫画《黎明的查莉娅》（Zarya of the Dawn）的版权登记的决定。这本漫画书使用了由 Midjourney 生成的生成式人工智能图像。值得注意的是，卡什塔诺娃的版权律师作为与会者之一，质疑了美国版权局关于卡什塔诺娃无法准确预测其文本提示的视觉结果的论据，并认为美国版权局最近的指导意见并未涉及此类"可预测性"分析。

Regarding GAI training, panelists took starkly differing positions on the legality of unlicensed use of internet-accessible content to "train" GAI platforms. For example, artist Karla Ortiz characterized this practice as grave and problematic, stating that "anthropomorphizing" these AI tools is "a fool's errand," and challenging the notion the GAI models are "trained" in the same way that artists learn from studying other artistic works. Ben B., the representative from Stability AI, on the other hand, discussed how GAI models are "trained," characterized the use of training materials as "transformative" (a clear allusion to copyright fair use), and pointed out common limitations of GAI (e.g. difficulties producing images of human hands) to demonstrate that GAI *learns* from exposure to third-party works, and is not merely a "collage machine" that copies portions of those works.

对于生成式人工智能训练问题，与会者对于未经许可使用互联网上的可访问内容对生成式人工智能平台进行"训练"的合法性问题持有截然不同的立场。例如，艺术家卡拉·奥尔蒂兹（Karla Ortiz）认为这一做法存在严重问题，她指出，将这些人工智能工具"拟人化"是一桩"愚蠢的差事"，并质疑了对生成式人工智能模型进行"训练"的方式与艺术家对其他艺术作品进行研究学习的方式一样的观点。而另一方面，来自 Stability AI 的代表 Ben B.却讨论了生成式人工智能模型的"训练"方式，将训练材料的使用描述为"转化性的"（此种描述显然是在暗指版权的合理使用），并通过指出生成式人工智能的常见短板（例如，生成式人工智能难以生成人手图像），证明了生成式人工智能通过对其他作品的接触进行*学习*，而不仅仅是对其他作品部分内容进行复制的"拼贴机器"。

Several participants also called attention to the removal of copyright management information (CMI) (e.g., copyright notices) in the training process. Relatedly, some called for the expansion of Section 1202 of Title 17–which prohibits willful removal of CMI—arguing that it should prohibit non-willful conduct, and reasoning that GAI models have exposed a flaw in Section 1202 through the systematic removal of CMI from billions of images.

一些与会者还呼吁关注在训练过程中删除版权管理信息（CMI）（例如版权声明）的问题。与此相关的另一项呼吁是扩大第 17 章第 1202 节的范围（该条禁止故意删除版权管理信息），持有此观点的与会者认为该条应当一并禁止非故意行为，否则，1202 条将形成法律漏洞，无法规制生成式人工智能模型系统性地删除数十亿张图像的版权管理信息的行为。