

广州互联网法院
Guangzhou Internet Court
民事判决书
Civil Judgment

(2024) 粤 0192 民初 113 号
(2024) Yue 0192 Min Chu No. 113

原告：上海新创华文化发展有限公司，住所地中国（上海）自由贸易试验区马吉路 2 号 16 层 03F 室。

Plaintiff: Shanghai Character License Administrative Co., Ltd. (SCLA), with its domicile at Room 03F, 16/F, 2 Maji Road, China (Shanghai) Pilot Free-Trade Zone, Shanghai, China.

法定代表人：孙刚

Legal representative: Sun Gang

委托诉讼代理人：张延来，浙江垦丁律师事务所律师。

Litigation Representative: Zhang Yanlai, lawyer from Zhejiang Kinding Law Firm.

委托诉讼代理人：单启迪，浙江垦丁（上海）律师事务所律师。

Litigation Representative: Dan Qidi, lawyer from Zhejiang Kinding (Shanghai) Law Firm.

被告：AI 公司（化名），住所地 IXXX。

Defendant: AI Company (alias), with its domicile at IXXX.

法定代表人：XX。

Legal representative: XX.

委托诉讼代理人：XXX, X, XXXXX

Litigation Representative: XXX, X, XXXXX

原告上海新创华文化发展有限公司与被告 AI 公司网络侵权责任纠纷一案，本院于 2024 年 1 月 5 日立案后，依法适用简易程序，于 2024 年 2 月 4 日公开开庭进行了审理。原告的委托诉讼代理人张延来、单启迪，被告的委托诉讼代理人 XXX 在线参加诉讼。本案现已审理终结。

In the case of the network infringement liability dispute between Shanghai Character License Administrative Co., Ltd. (Plaintiff) and the AI Company (Defendant), this court filed this case on January 5, 2024, for which the summary procedure was applied in accordance with law. The court held a public hearing on February 4, 2024. Plaintiff's litigation representatives Zhang Yanlai and Shan Qidi, and Defendant's litigation representative XXX participated in the lawsuit online. The case has now been concluded.

原告向本院提出诉讼请求：1. 判令被告立即停止生成侵权奥特曼图片，并将案涉奥特曼物料从其训练数据集中删除；2. 判令被告赔偿原告经济损失及为制止侵权而支出的合理费用 30 万元；3. 被告承担本案全部诉讼费用。事实和理由：“奥特曼”系全球家喻户晓的动漫形象，奥特曼系列作品在爱奇艺、腾讯、哔哩哔哩等各大视频网站的热播排名均名列前茅，具有广泛的影响力和知名度。2013 年，奥特曼特摄系列作品被吉尼斯世界纪录认证为“衍生系列剧最多的电视节目”。自进入中国以来，奥特曼系列获 2014 年度中国动漫授权业十大海外品牌、2016 年度中国授权展人气 IP 奖、2017 年度中国授权展人气 IP 奖、2018 年中国授权金星奖卓越人气 IP 奖、2020 年中国授权金星奖卓越人气 TP 奖、2020 年度金花瓣奖卡通单元、年度最具人气卡通奖（爱奇艺）、2020 年度“时尚人物”奖（天猫）等数十项大奖。奥特曼系列玩具常年霸榜各大销售榜单，2022 年，阿里 IP 库产品介绍及百大 IP 排名显示，奥特曼系列作品排名第一。“奥特曼”为 NISSAN、本田汽车、BMW 赛车、东芝洗衣机、罗森、优衣库等各行业头部企业进行代言，此外还积极参与各类社会公益活动、行业展览、进行游戏授权及图书出版等，在社会各行各业均具有广泛的影响力。圆谷制作株式会社系奥特曼系列的著作权人，就奥特曼各系列形象均进行了著作权登记。2019 年，圆谷制作株式会社与原告签订《授权证明》，将奥特曼系列形象的著作权独占授权给原告，并授予原告维权权利。被告经营 Tab（化名）网站，具有 AI 对话及 AI 生成绘画功能。原告发现，当要求 Tab 生成奥特曼相关图片时（如输入“生成一张戴拿奥特曼”），Tab 生成的奥特曼形象与原告奥特曼形象构成实质性相似。Tab 的 AI 绘画功能系会员专属功能，且每次生成图片需消耗“算力”，无论会员还是“算力”均需用户额外进行充值。原告认为，被告未经授权，擅自利用原告享有权利的作品训练其大模型并生成实质性相似的图片，且通过销售会员充值及“算力”购买等增值服务攫取非法收益，前述行为给原告造成严重损害，遂起诉，维护自身合法权益。

Plaintiff filed the following claims to this court: 1. To order Defendant to immediately cease generation of infringing Ultraman images and delete the disputed Ultraman materials from its training dataset; 2. To order Defendant to compensate Plaintiff for its economic losses and reasonable expenses of 300,000 Yuan incurred in order to cease the infringement; and 3. Defendant shall bear the full cost of litigation in this case. Facts and reasons: “Ultraman” is a globally renowned animated character in

the world. The Ultraman series has been ranked among the most popular on iQIYI, Tencent, Bilibili and other major video websites. It has extensive influence and popularity. In 2013, the Ultraman series was certified by the Guinness World Records as the “TV Program with the Most Spin-Off Series.” Since its introduction to China, the Ultraman series has won numerous awards, including Top Ten Overseas Brands of China Animation Licensing Industry of 2014, the Popular IP Award of China Licensing Expo of 2016, the Popular IP Award of China Licensing Expo of 2017, the Outstanding IP Award of China Golden Star Award of 2018, the Outstanding IP Award of China Golden Star Award of 2020, the Golden Petal Award of Cartoon Unit of 2020, the Most Popular Cartoon Award of the Year (iQIYI), and the “Fashion Person” Award of 2020 (Tmall), among dozens of other awards. The Ultraman series of toys have been dominating major sales lists all year round. In 2022, the product introduction to Alibaba’s IP Database and its ranking of the Top 100 IPs shows that the Ultraman series ranked first. The “Ultraman” character has endorsed NISSAN, Honda, BMW Motorsport, Toshiba Washing Machine, Lawson, Uniqlo and other leading companies in various industries. Additionally, it has actively participated in various social welfare activities, industry exhibitions, game licensing and book publishing, etc. Ultraman has a wide influence across different sectors of the society. Tsuburaya Productions Co., Ltd. (“Tsuburaya Productions”) is the copyright owner of the Ultraman series, and has registered the copyrights of the images of each Ultraman series. In 2019, Tsuburaya Productions and Plaintiff entered into the “Authorization Certificate,” which exclusively licensed the copyrights of the Ultraman series to Plaintiff, and granted Plaintiff the right to enforce these rights. Defendant operates a website named Tab (alias), which has AI dialog and AI image generation features. Plaintiff discovered that when Tab is requested to generate Ultraman-related images (e.g., by entering “Generate an Ultraman Dyna”), the Ultraman image generated by Tab is substantially similar to Plaintiff’s Ultraman image. Tab’s AI image generation feature is a member-exclusive function, and each generation of an image requires “computing power.” Both membership and “computing power” require additional user payments. Plaintiff contends that Defendant, without authorization, used Plaintiff’s copyrighted works to train its large models and generate substantially similar images. Defendant has illegally profited from value-added services such as membership recharge and “computing power” purchases. Plaintiff believes that Defendant’s actions have caused significant damages. Therefore, Plaintiff has filed a lawsuit to enforce its legal rights and interests.

原告于 2024 年 2 月 1 日向本院提交了《变更诉讼请求申请书》，并在庭审中申请将本案案由变更为著作权侵权纠纷，向被告主张复制权、改编权及信息网络传播权侵权，明确除“将案涉奥特曼物料从其训练数据集中删除”外，还包括被告应采取合理措施，阻断 Tab 生成与案涉奥特曼作品相同或相似的图片。并补充事实与理由如下：被告 Tab 的 AI 绘画功能可根据用户指令生成对应的图片，如用户输入“生成一个奥特曼”，即生成奥特曼形象图片；输入“奥特曼融合美少女战士”，即生成奥特曼身体拼接美少女战士长发形象的图片等。原告认为，被告擅自生成多个奥特曼图片，侵犯了原告对案涉奥特曼作品享有的复制权；部分侵权图片，如插

画风格奥特曼、奥特曼与美少女及哆啦 A 梦等其他形象的融合，存在与原告权利作品构成实质性相似等问题，侵犯了原告对案涉奥特曼作品享有的改编权；被告生成案涉所有图片并向用户提供，侵犯了原告对案涉奥特曼作品享有的信息网络传播权。

On February 1, 2024, Plaintiff submitted the Application for Change of Claim to this court and moved to change the cause of action of this case to copyright infringement, claiming against Defendant for infringement of the rights of reproduction, adaptation and information network dissemination. Plaintiff specified that in addition to “deleting the disputed Ultraman materials from its training dataset,” Defendant should also take reasonable measures to prevent Tab from generating images that are identical or similar to the disputed Ultraman work. In addition, the following facts and reasons were added: Defendant Tab’s AI image generation feature could generate images corresponding to the user’s instructions. For example, when a user inputs “Generate an Ultraman,” an image of Ultraman is generated; when a user inputs “Ultraman blended with Sailor Moon,” an image of Ultraman’s body combined with Sailor Moon’s long hair is generated. Plaintiff contends that Defendant’s unauthorized generation of multiple Ultraman images infringes on Plaintiff’s right of reproduction of the disputed Ultraman work. Certain infringing images, such as Ultraman in an illustration style and the blending of Ultraman with other characters (e.g., Sailor Moon and Doraemon), are substantially similar to Plaintiff’s copyrighted works, infringing upon Plaintiff’s adaptation right of the disputed Ultraman work. Defendant generated all the disputed images and provided them to users, which infringed Plaintiff’s right to disseminate the disputed Ultraman work over information networks.

本院当庭向原、被告双方释明，变更本案案由为著作权侵权纠纷。

The court explained to Plaintiff and Defendant in court that the cause of action in this case was changed to copyright infringement.

被告答辩称：不同意原告的全部诉讼请求。第一，被告收到本案送达材料时已停止原告主张的侵权行为。第二，被告无主观和客观擅自利用原告享有权利的作品训练大模型并生成实质性相似的图片的行为，案涉网站的 AI 绘画功能是通过第三方服务商实现的，与被告无关。被诉图片为原告主动制作生成，原告无被告通过展示以及宣传奥特曼图片从而获利的直接证据；且 AI 绘画为会员限免功能，上线期间购买会员后可免费使用，“算力”为赠送。第三，原告主张的会员充值及“算力”购买，被告均未实际收取费用。原告无证据证明被告主观和客观上擅自利用原告享有权利的作品进行宣传展示获利。第四，原告无证据证明被告的行为造成原告 30 万元的经济损失以及其他费用。

Defendant responded that it disagreed with all of Plaintiff’s claims. First, Defendant had ceased the alleged infringing actions when the case documents were served. Second, Defendant denies any subjective or objective intent to use Plaintiff’s copyrighted works without authorization for training large models or creating substantially similar images. The AI image generation feature of the website in this case was implemented through a third-party service provider, which is unrelated to Defendant.

Additionally, since the disputed images were produced and generated by Plaintiff voluntarily, there is no direct evidence proving that Defendant profited from exhibiting and publicizing the Ultraman images. Furthermore, the AI image generation feature is presented as a free, members-only service, with “computing power” provided as a bonus for those who purchase a membership during the service’s launch period. Third, Defendant has not actually charged any fee for membership recharges or “computing power” purchases as claimed by Plaintiff. Plaintiff has no evidence to prove that Defendant subjectively or objectively intended to use the works owned by Plaintiff to make profits without authorization. Fourth, Plaintiff has no evidence to prove that Defendant’s act caused 300,000 Yuan of economic losses and other expenses to Plaintiff.

原、被告通过本院诉讼平台提交了证据，并通过本院诉讼平台和庭审对证据的真实性、合法性、关联性充分发表了意见。对本案有关事实，本院认定如下：

Plaintiff and Defendant submitted evidence through the court’s litigation platform and fully expressed their opinions on the authenticity, legality and relevance of the evidence through the court’s litigation platform and the court’s hearing. The court identified the relevant facts of this case as follows:

一、案涉作品的权属情况

1. Ownership of the Disputed Work

（一）案涉奥特曼作品的授权情况

（1） Authorization of the Disputed Ultraman Work

案外人圆谷制作株式会社系奥特曼系列作品的著作权人。2019年4月1日、2019年5月1日、2019年8月1日、2019年12月2日、2020年5月1日、2020年11月30日、2021年3月16日，圆谷制作株式会社与原告分别签订《授权证明》及六份《补充授权证明》，授权期限分别为：2019年4月1日至2024年3月31日、2019年5月1日至2024年3月31日、2019年8月1日至2024年3月31日、2019年12月2日至2024年3月31日、2020年5月1日至2024年3月31日、2020年11月22日至2024年3月31日、2021年3月14日至2024年3月31日，授权范围为中华人民共和国境内（不包括香港、澳门、台湾地区）。

The third party, Tsuburaya Productions is the copyright owner of Ultraman series. On April 1, 2019, May 1, 2019, August 1, 2019, December 2, 2019, May 1, 2020, November 30, 2020, and March 16, 2021, Tsuburaya Productions and Plaintiff signed the “Authorization Certificate” and six “Supplementary Authorization Certificates” respectively. The authorization periods are April 1, 2019 to March 31, 2024; May 1, 2019 to March 31, 2024; August 1, 2019 to March 31, 2024; December 2, 2019 to March 31, 2024; May 1, 2020 to March 31, 2024; November 22, 2020 to March 31, 2024; and March 14, 2021 to March 31, 2024. The scope of authorization is within the territory of the People’s Republic of China (excluding Hong Kong, Macau, and Taiwan).

《授权证明》载明，圆谷制作株式会社将授权作品及其作品名称、角色名称、角色形象、标志符号、道具、场景等艺术形象和元素的复制权、信息网络传播权、改编权等在授权期限、授权范围内，独占性地授予原告，并授予其独立维权的权利。前述《授权证明》及《补充授权证明》授权的奥特曼角色形象包括已进行著作权登记的案涉奥特曼形象。

The Authorization Certificate specifies that Tsuburaya Productions has exclusively granted Plaintiff the right of reproduction, information network dissemination and adaptation with respect to the artistic images and elements such as the names of the works, names of roles, images of roles, logos, props and scenes, within the term and scope of the authorization. This also includes the right to independently enforce these rights. The Ultraman images authorized by the “Authorization Certificate” and the “Supplementary Authorization Certificates” include the disputed Ultraman image whose copyright has been registered.

《授权证明》及《补充授权证明》所涉签名或印章经由日本公证员公证，以及我国驻日本大使馆领事确认。

The signatures or seals involved in the “Authorization Certificate” and the “Supplementary Authorization Certificates” have been notarized by a Japanese notary public and confirmed by the consulate of our country’s embassy in Japan.

（二）案涉奥特曼作品的登记情况

（2） Registration Information of the Disputed Ultraman Work

原告主张奥特曼相关系列作品登记的著作权人均为圆谷制作株式会社，提供以下证据予以证明：

Plaintiff alleges that the registered copyright owner of the Ultraman-related series of works is Tsuburaya Productions. Plaintiff provided the following evidence to prove its claim:

序号 No	作品 名称 Title of Work	登记号 Registration Number	作品 类型 Type of Work	首次发表 日期 First Publication Date	登记日期 Registration Date	登记机关 Registration Authority
1	赛罗奥特曼 Ultraman Zero	国作登字 Guo Zuo Deng Zi -2019-F- 00700316	美术 作品 Artwork	2009 年 9 月 10 日 September 10, 2009	2019 年 2 月 28 日 February 28, 2019	中华人民共和国 国家版权局 National Copyright Administration of the People's Republic of China (NCAC)
2	迪迦奥特曼系 列之奥特曼形 象作品集 Ultraman Tiga Series: Ultraman Image Collection	国作登字 Guo Zuo Deng Zi -2019-F- 00916695	美术 作品 Artwork	1996 年 9 月 7 日 September 7, 1996	2019 年 11 月 12 日 November 12, 2019	中华人民共和国 国家版权局 NCAC
3	捷德奥特曼 原始形态 Ultraman Geed (Primitive Type)	国作登字 Guo Zuo Deng Zi -2019-F- 00700321	美术 作品 Artwork	2017 年 4 月 12 日 April 12, 2017	2019 年 2 月 28 日 February 28, 2019	中华人民共和国 国家版权局 NCAC

4	捷德奥特曼系列之英雄形象作品集 Ultraman Geed Series: Hero Image Collection	国作登字 Guo Zuo Deng Zi -2019-F-00834454	美术作品 Artwork	2017 年 4 月 13 日 April 13, 2017	2019 年 8 月 15 日 August 15, 2019	中华人民共和国国家版权局 NCAC
5	戴拿奥特曼系列之奥特曼形象作品集 Ultraman Dyna Series: Ultraman Image Collection	国作登字 Guo Zuo Deng Zi -2019-F-00916929	美术作品 Artwork	1997 年 7 月 15 日 July 15, 1997	2019 年 11 月 14 日 November 14, 2019	中华人民共和国国家版权局 NCAC
6	银河奥特曼系列之英雄形象作品集 Ultraman Ginga Series: Hero Image Collection	国作登字 Guo Zuo Deng Zi -2019-F-0094728f	美术作品 Artwork	2015 年 3 月 14 日 March 14, 2015	2019 年 12 月 3 日 December 3, 2019	中华人民共和国国家版权局 NCAC

7	欧布奥特曼系列之英雄形象作品集 Ultraman Orb Series: Hero Image Collection	国作登字 Guo Zuo Deng Zi -2019-F-00918314	美术作品 Artwork	2016 年 4 月 15 日 April 15, 2016	2019 年 12 月 11 日 December 11, 2019	中华人民共和国国家版权局 NCAC
8	罗布奥特曼系列之奥特曼形象作品集 Ultraman R/B Series: Ultraman Image Collection	国作登字 Guo Zuo Deng Zi -2019-F-00836609	美术作品 Artwork	2018 年 4 月 12 日 April 12, 2018	2019 年 9 月 23 日 September 23, 2019	中华人民共和国国家版权局 NCAC
9	梦比优斯奥特曼系列之奥特曼形象作品集 Ultraman Mebius Series: Ultraman Image Collection	国作登字 Guo Zuo Deng Zi -2019-F-00916930	美术作品 Artwork	2006 年 3 月 28 日 March 28, 2006	2019 年 11 月 14 日 November 14, 2019	中华人民共和国国家版权局 NCAC
10	奈克赛斯奥特曼系列之奥特曼形象作品集 Ultraman Nexus Series: Ultraman Image Collection	国作登字 Guo Zuo Deng Zi -2019-F-00916931	美术作品 Artwork	2004 年 9 月 16 日 September 16, 2004	2019 年 11 月 14 日 November 14, 2019	中华人民共和国国家版权局 NCAC

11	泰迦奥特曼系列之奥特曼形象作品集 Ultraman Taiga Series: Ultraman Image Collection	国作登字 Guo Zuo Deng Zi -2020-F-00973239	美术作品 Artwork	2019 年 4 月 18 日 April 18, 2019	2020 年 1 月 14 日 January 14, 2020	中华人民共和国国家版权局 NCAC
12	盖亚奥特曼系列之奥特曼形象作品集 Ultraman Gaia Series: Ultraman Image Collection	国作登字 Guo Zuo Deng Zi -2020-F-01185119	美术作品 Artwork	1999 年 8 月 28 日 August 28, 1999	2020 年 12 月 10 日 December 10, 2020	中华人民共和国国家版权局 NCAC
13	高斯奥特曼系列之英雄形象作品集 Ultraman Cosmos Series: Hero Image Collection	国作登字 Guo Zuo Deng Zi -2021-F-00094829	美术作品 Artwork	2003 年 8 月 2 日 August 2, 2003	2021 年 4 月 27 日 April 27, 2021	中华人民共和国国家版权局 NCAC
14	泽塔奥特曼系列之奥特曼形象作品集 (一) Ultraman Z Series: Ultraman Image Collection (I)	国作登字 Guo Zuo Deng Zi -2020-F-01029605	美术作品 Artwork	/	2020 年 5 月 12 日 May 12, 2020	中华人民共和国国家版权局 NCAC
15	特利迦奥特曼系列之英雄形象作品集 (一) Ultraman	国作登字 Guo Zuo Deng Zi -2021-F-	美术作品 Artwork	2021 年 4 月 15 日 April 15, 2021	2021 年 6 月 22 日 June 22, 2021	中华人民共和国国家版权局 NCAC

	Trigger Series: Hero Image Collection (I)	00138958				
16	特利迦特曼系列之英雄形象作品集（二） Ultraman Trigger Series: Hero Image Collection (II)	国作登字 Guo Zuo Deng Zi -2021-F- 00138967	美术 作品 Artwork	2021 年 4 月 15 日 April 15, 2021	2021 年 6 月 22 日 June 22, 2021	中华人民共和国 国家版权局 NCAC
17	特利迦特曼系列之英雄形象作品集（三） Ultraman Trigger Series: Hero Image Collection (III)	国作登字 Guo Zuo Deng Zi -2021-F- 00138969	美术 作品 Artwork	2021 年 4 月 15 日 April 15, 2021	2021 年 6 月 22 日 June 22, 2021	中华人民共和国 国家版权局 NCAC
18	艾克斯特曼系列之英雄形象作品集 Ultraman X Series: Hero Image Collection	国作登字 Guo Zuo Deng Zi -2021-F- 00090882	美术 作品 Artwork	2015 年 4 月 15 日 April 15, 2015	2021 年 4 月 22 日 April 22, 2021	中华人民共和国 国家版权局 NCAC

（三）案涉奥特曼作品主要特征

（3） Main Characteristics of the Disputed Ultraman Work

案涉奥特曼作品的主要特征包括：额头中部如鱼鳍状呈对称菱形状凸起，额头左右两侧脑部头骨向内凹陷从前额延伸至后脑，没有鼻子，鳍状底部眉心处镶嵌一颗水晶，一条中线从水晶向下延伸至嘴部，眼睛是奥特曼系列标志性的向外突出的巨大双眼，两眼睛为椭圆蛋型等对称横卧于中缝线两侧；上胸与中胸之前凸起一块水滴型（尖朝下）底座，底座内镶嵌有指示灯。

The main characteristics of the disputed Ultraman work include: the middle of the forehead is like a fish fin, which is a symmetrically diamond-shaped bulge; the left and right sides of the forehead are sunken inwards, extending from the forehead to the back of the brain; there is no nose; a crystal is inlaid between the eyebrows at the bottom of the fin, with a midline that extends from the crystal to the mouth. The eyes are iconic and protruding huge eyes of the Ultraman series, and the two eyes are

oval, egg-shaped and lying symmetrically on both sides of the midline; a teardrop-shaped (pointed downwards) base protrudes in front of the upper chest and the middle chest, and there is an indicator light inlaid in the base.

(四) 案涉奥特曼作品的获奖及其他相关情况

(4) Awards Received by the Disputed Ultraman Work and Other Relevant Information

原告主张案涉奥特曼作品具有极高的知名度，并提供如下证据予以证明：奥特曼系列获 2014 年度中国动漫授权业十大海外品牌、2017 年度中国授权展人气 IP 奖等诸多奖项，《奥特曼》被吉尼斯世界纪录认定为“派生系列剧集最多的电视节目”。此外，奥特曼形象曾为 NISSAN、本田汽车、BMW 赛车、东芝洗衣机、罗森、优衣库、欧莱雅等企业进行代言，且曾参与社会公益活动。根据 2022 年阿里 IP 库产品介绍及百大 IP 排名（根据 2021 年期间 IP 方在淘宝、天猫平台综合运营数据指标计算得出），IP 标准名“宇宙英雄奥特曼”作品排名第一。

Plaintiff claims that the disputed Ultraman work is extremely well-known and provides the following evidence for proof: the Ultraman series won many awards such as the Top Ten Overseas Brands of China Animation Licensing Industry of 2014, and the Popular IP Award of China Licensing Expo of 2017. The Ultraman was recognized by the Guinness World Records as the “TV Program with the Most Spin-off Series.” In addition, the Ultraman character has endorsed NISSAN, Honda, BMW Motorsport, Toshiba Washing Machine, Lawson, Uniqlo, L’Oréal and other enterprises. It also has participated in social welfare activities. According to the product introduction to Alibaba’s IP Database and its ranking of top 100 IPs in 2022 (calculated according to the comprehensive operation data indicators of IP parties on Taobao and Tmall platforms during 2021), the IP standard name “Cosmic Hero Ultraman” ranks the first in the list.

二、Tab 服务的基本情况

2. Basic Information of the Tab Service

Tab 的 AI 绘画功能系会员专属功能。在线庭审中，被告陈述 Tab 于 202X 年 X 月上线，付费用户可以无限次、不限字数地使用会员版本，用户购买会员后将获赠一定额度的“算力”，该“算力”可用于 AI 绘画等，每次使用 AI 绘画消耗 3 “算力”。“算力”消耗完毕，用户需另行充值。

Tab’s AI image generation feature is exclusive to members. During the online court trial, Defendant stated that Tab was launched in MM, 202X, [the exact month and year are omitted from the opinion] and that paid users could use the member version for an unlimited number of times with no word limit. After purchasing the membership, users would receive a certain amount of “computing power” for free, which could be used for AI image generation and other services. Each use of the AI image generation service would consume “computing power.” When the “computing power” was used

up, users would need to add additional computing power.

为证明案涉图片系由第三方服务商提供，其并没有使用案涉奥特曼形象进行训练，被告提供了与第三方服务商签订的《订单协议》，并附有被告在第三方服务商云服务后台调用接口信息、常用接口信息及 AI 绘画-基础版提交请求页面截图、第三方服务商云平台用户协议截图等加以佐证。

In order to prove that the disputed images were provided by a third-party service provider and not trained using the disputed Ultraman work, Defendant provides the “Order Agreement” signed with the third-party service provider, supported by additional evidence including screenshots of Defendant’s use of the third-party service provider’s cloud service backend interface, common interface information and AI image generation basic version submission request page, as well as screenshots of the third-party service provider’s cloud platform user agreement.

三、Tab 生成案涉相关图片的情况

3. Circumstances Regarding the Generation of Disputed Images by Tab

（一）Tab 生成案涉图片具体操作步骤

（1）Specific Procedures for Tab to Generate the Disputed Images

2023 年 12 月下旬，原告发现被告经营的 Tab 网站可生成与案涉奥特曼形象相同或相似的图片，具体的生成方法如下：

In late December 2023, Plaintiff discovered that the Tab website operated by Defendant could generate images identical or similar to the disputed Ultraman image. The specific generation method is as follows:

1. 在 Tab 的 AI 绘画模块对话框中输入提示语“生成奥特曼”，Tab 即在示例图区域显示一张与案涉奥特曼形象一致的图片，供用户查看和下载；

Input the prompt “Generate an Ultraman” in the dialog box of the AI image generation module of the Tab, and the Tab displays an image consistent with the disputed Ultraman image in the area of sample images for the user to view and download;

2. 在对话框中输入提示语“奥特曼拼接长发”，Tab 即在示例图区域显示一张保留了案涉奥特曼形象特征且头部留有长发的图片，供用户查看和下载；

Input the prompt “Ultraman with long hair” in the dialog box, and Tab displays an image with long hair on the head which retains the characteristics of the disputed Ultraman image area of sample images for the user to view and download;

3. 在对话框中输入提示语“生成插画风格的奥特曼”，Tab 即在示例图区域显示一张保留了案涉奥特曼形象特征的具有插画风格的奥特曼图片，供用户查看和下载。

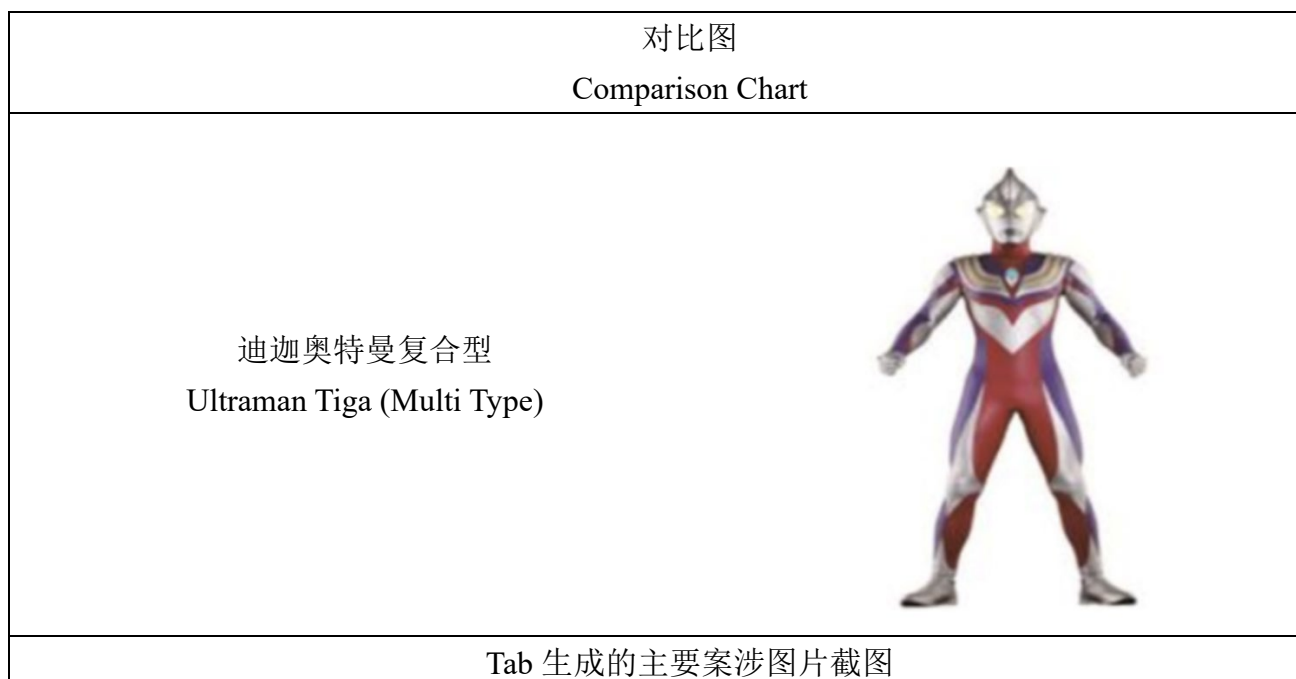
Input the prompt “Generate an Ultraman in the style of an illustration” in the dialog box, and Tab displays an image of Ultraman in the style of an illustration which retains the characteristics of the disputed Ultraman image in the area of sample images for the user to view and download.

（二）Tab 生成案涉相关图片具体内容对比

（2） Comparison of Specific Content of the Disputed Images Generated by Tab

原告主张被告经营的 Tab 网站能生成与原告案涉奥特曼形象构成实质性相似的图片，且生成上述图片的 AI 绘画功能系会员专属功能，每次生成相关图片需消耗对应“算力”。为证明案涉图片涉及侵犯其复制权、改编权、信息网络传播权，原告提交了输入提示词后，被告 Tab 网站生成的案涉图片截图。迪迦奥特曼复合型原图与 Tab 网站生成的主要图片截图对比如下：

Plaintiff alleges that the Tab website operated by Defendant is capable of generating images substantially similar to the disputed Ultraman image, that the AI image generation feature for the generation of such images is exclusive to members, and that the generation of the images will consume “computing power. In order to prove that the disputed images infringed the right of reproduction, the right of adaptation and the right of information network dissemination, Plaintiff submitted screenshots of the disputed images generated by Defendant’s Tab website after inputting the prompt word. The original image of Ultraman Tiga (Multi Type) is compared with the screenshots of the main images generated by the Tab website as follows:



Screenshots of the Main Disputed Images Generated by Tab



图 1
FIG. 1

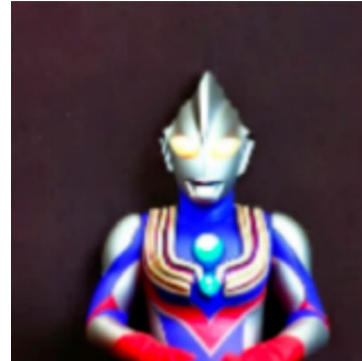


图 2
FIG. 2



图 3
FIG. 3



图 4
FIG. 4

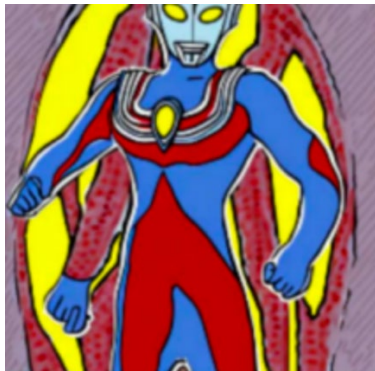


图 5
FIG. 5



图 6
FIG. 6



图 7
FIG. 7



图 8
FIG. 8



图 9
FIG. 9



图 10
FIG. 10

迪迦奥特曼复合型属于前述第二项《迪迦奥特曼系列之奥特曼形象作品集》中的作品，其主要特征为：全身以银色为底色并搭配红、蓝、黄三种颜色线条覆盖周身；一条中线从水晶向下延伸至嘴部，两眼睛为椭圆蛋型对称横卧于中缝线两侧；脖颈与胸部为同为红色，以整体呈倒 V 窄体型于正中间从上胸延伸至下胸，三条银色与两条黄色交替相间的条纹，并与上下两条蓝色条纹结合，呈 U 型护胸甲从双肩搭在整个胸前；上腹部由展翅 V 型银色线条覆盖；整体呈 H 型的红色线条从两肋延展至下腹部再延展至大腿两侧到膝关节处；蓝色线条从其腋窝处依次延伸至肋部、腰部、大腿两侧到膝关节处；膝关节正面由上长下短的菱形银色线条覆盖，两小腿内侧为红色线条、外侧为蓝色线条。

Ultraman Tiga (Multi Type) belongs to the second item of the aforementioned “Ultraman Tiga Series: Ultraman Image Collection,” its main characteristics being that: the whole body is covered with silver color and red, blue and yellow lines; a midline extends from the crystal down to the mouth, and two eyes are oval, egg-shaped symmetrically lying on both sides of the midline; the neck and chest are the same red, with an inverted V-shaped narrow body shape extending from the upper chest to the lower chest, and three silver and two yellow stripes alternating with two blue stripes up and down, forming a U-shaped cuirass that covers the whole chest from the shoulders; the upper abdomen is

covered by a V-shaped silver line with wings spread; the whole H-shaped red lines extend from the ribs to the lower abdomen, and then to the sides of the thighs to the knee joint; the blue lines extend from its armpits, the ribs, the waist, the sides of the thighs to the knee joint; the front of the knees is covered by diamond-shaped silver lines that are longer at the top and shorter at the bottom, with red lines on the inner side and blue on the outer.

“图 1”至“图 3”所展现形象均具有以下特征：一条中线从水晶向下延伸至嘴部，两眼睛为椭圆蛋型对称横卧于中缝线两侧；上胸与中胸之前凸起底座，有指示灯；数条交替相间的条纹呈 U 型护胸甲从双肩搭在整个胸前；全身以银色为底色并搭配红色等颜色线条覆盖周身。经对比，案涉生成图片保留了奥特曼这一美术形象的独创性表达。被告通过 Tab 网站对外提供生成式人工智能服务，并在服务过程中产生的生成物在多个关键特征与案涉奥特曼形象具有极高的相似度，构成实质性相似。

The images shown from “FIG. 1” to “FIG. 3”, all have the following characteristics: a midline extends from the crystal down to the mouth; two eyes are oval, egg-shaped symmetrically lying on both sides of the central suture; the upper chest and the middle chest have raised bases and indicator lights; several alternating stripes form a U-shaped cuirass that covers the whole chest from the shoulders; and the whole body is covered with silver as the background and red lines. In comparison, the disputed generated images retain the original expression of the Ultraman artistic image. Defendant provides generative artificial intelligence services through the Tab website, and the outputs generated in the service process bear a high degree of similarity to the disputed Ultraman image in a number of key characteristics, constituting substantial similarity.

“图 4”至“图 6”均具有以下特征：数条交替相间的条纹呈 U 型护胸甲从双肩搭在整个胸前；上胸与中胸之前凸起底座，有指示灯；整体呈 H 型的线条从两肋延展至下腹部。经对比，此类案涉生成图片整体为插画风格，与案涉奥特曼形象存在一定差异。

From “FIG. 4” to “FIG. 6”, these images all have the following characteristics: several alternating stripes form a U-shaped cuirass that covers the whole chest from the shoulders; the upper chest and the middle chest have raised bases and indicator lights; and the whole H-shaped lines extend from the ribs to the lower abdomen. In comparison, the disputed generated images are of illustration style as a whole, which present certain differences from the disputed Ultraman image.

“图 7”至“图 10”与案涉奥特曼形象也存在一定的差异，其主要特征表现为以第三方卡通形象拼接了案涉奥特曼形象的典型元素。

There are also some differences between images from “FIG. 7” to “FIG. 10”, and the disputed Ultraman image. The main feature is that the typical elements of the disputed Ultraman image are combined with third-party cartoon images.

综上所述，“图 4”至“图 10”等图片，部分保留了前述“迪迦奥特曼复合型”形象的独创性表达，并在保留该独创性表达的基础上形成了新的特征。

To summarize, the images from “FIG. 4” to “FIG. 10” partially retain the original expression of the aforementioned “Ultraman Tiga (Multi Type)” image and have developed new characteristics while retaining some of the original expression.

(三) 被告应诉后采取的相关措施

(3) Relevant Measures Taken by Defendant after Responding to the Lawsuit

被告称在接到本案送达的传票及案件材料后，其已采取关键词屏蔽措施阻断 Tab 网站生成奥特曼相关形象。庭审中，在 Tab 网站的 AI 绘画模块对话框中输入包含“奥特曼”的提示词，Tab 网站弹出“您发送的信息包含不合规的内容”，图片生成区域无任何生成动作，在对话框输入“迪迦”，Tab 的 AI 绘画模块生成的图片特征与原告案涉奥特曼形象对比原图高度相似。

Defendant stated that, after receiving the summons and documents served with this case, it had implemented keyword blocking measures to prevent the Tab website from generating Ultraman-related images. During the trial, when a prompt word containing “Ultraman” was entered in the dialog box of the Tab website’s AI image generation module, the Tab website popped up “the message you sent contains non-compliant content”, and there was no action in the image generation area. When “Tiga” was entered in the dialog box, the features of the image generated by Tab’s AI image generation module were highly similar to the original image of Plaintiff’s disputed Ultraman image.

截至本案开庭前，未发现被告 Tab 网站有用户相关协议或平台规则，或告知用户使用服务时不得侵犯他人著作权或其它合法权益；也未发现被告 Tab 网站有告知用户该网站产生的图片由 AI 生成，且也未向用户释明其接入 Tab 网站的 AI 绘画功能由第三方服务商提供。

As of the trial of this case, Defendant’s Tab website has not been found to have any relevant user agreement or platform rule, or notices to inform the user not to infringe upon others’ copyright or other legal rights and interests when using the service. Additionally, there was no indication that Defendant’s Tab website informed the user that the images generated by the website were generated by AI, or explained to the user that the AI image generation feature of the Tab website was provided by a third-party service provider.

四、本院查明的其他事实

4. Other Facts Determined by this Court

原告为维护案涉奥特曼作品著作权，支出相关取证、公证等费用包括：杭州互联网公证处取证服务费用 300 元；Tab 取证服务三次，共计 136.35 元；同类 AI 绘图服务使用证据举证 833 元，合计 1269.35 元。原告提供了消费记录、联合信任可信时间戳电子账单，以证明费用实际

产生。

In order to protect its right of authorship in the disputed Ultraman work, Plaintiff incurred the following expenses on the production of relevant evidence and notarization: a Hangzhou Internet Notary Public service fee of 300 Yuan; a fee of 136.35 Yuan for collecting evidence from Tab services three times; and a fee of 833 Yuan for using a comparable AI image generation service for evidence production. The expenses total 1269.35 Yuan. Plaintiff provided records of expenses and UniTrust Time Stamp Authority electronic statements to prove that expenses had actually incurred.

前述事实，有《授权证明》及《补充授权证明》、案涉生成图片截图、案涉网站截图、订单协议、质证记录、庭审笔录等证据材料在案佐证。

The aforementioned facts are substantiated by the “Authorization Certificate” and “Supplementary Authorization Certificates”; screenshots of the disputed generated images; screenshots of the allegedly infringing website; a purchase order agreement; a cross-examination record; the trial transcript; and other documents on record.

本院认为，本案原以网络侵权责任纠纷起诉立案，后变更为著作权侵权纠纷。根据本案查明事实及双方的诉辩主张，本案争议焦点为：一、被告是否侵犯了原告的复制权、改编权和信息网络传播权；二、如果构成侵权，被告应承担何种民事责任。

This court holds that the case at hand has transformed from a dispute over network infringement liability to a dispute over the infringement of the right of authorship. Based on the ascertainment of facts and claims made by both parties, the disputes at issue are: 1) whether Defendant infringed upon Plaintiff’s right of reproduction, right of adaptation, and right of information network dissemination, and 2) if Defendant’s conduct constitutes infringement, what civil liabilities should Defendant incur.

关于案涉奥特曼作品是否受《中华人民共和国著作权法》保护的问题。案涉奥特曼形象作为具有独创性的美术作品，依法受到著作权保护，该作品的权利人为圆谷制作株式会社，根据《中华人民共和国著作权法》第二条第二款规定，外国人、无国籍人的作品根据其作者所属国或者经常居住地国同中国签订的协议或者共同参加的国际条约享有的著作权，受该法保护。因此，案涉奥特曼作品受《中华人民共和国著作权法》的保护。

Regarding whether the disputed Ultraman work is protected by the Copyright Law of the People’s Republic of China, this court holds that the disputed Ultraman image is a graphic work that possesses originality. Therefore, the work is under copyright protection, and the work’s right holder is the Tsuburaya Productions. Pursuant to Article 2, Paragraph 2 of the Copyright Law of the People’s Republic of China, “[a]ny work of a foreigner or stateless person which enjoys copyright under an agreement concluded between the country to which the author belongs or in which the author permanently resides and China, or under an international treaty to which both countries are parties, shall be protected by this Law.” Hence, the disputed Ultraman work is protected by the Copyright Law

of the People's Republic of China.

关于原告是否具有独立维权的权利。《中华人民共和国著作权法》第十二条第一款规定“在作品上署名的自然人、法人或者 非法人组织为作者，且该作品上存在相应权利，但有相反证明的除外。”《最高人民法院关于审理著作权民事纠纷案件适用法律若干问题的解释》第七条第一款规定“当事人提供的涉及著作权的底稿、原件、合法出版物、著作权登记证书、认证机构出具的证明、取得权利的合同等，可以作为证据。”在无有效相反证据的情况下，依据原告提交的奥特曼系列作品登记证书及作品图，应认定案涉奥特曼作品的著作权人为案外人圆谷制作株式会社。依据圆谷制作株式会社与原告签订的《授权证明》及《补充授权证明》，原告在授权期限与授权范围内独占性享有奥特曼形象系列美术作品的著作权，具体包括授权作品及其作品名称、角色名称、角色形象、标志符号、道具、场景等艺术形象和元素的复制权、信息网络传播权、改编权等，并拥有独立维权的权利。

Regarding whether Plaintiff has the independent right to enforce the rights of authorship [in Ultraman], Article 12, Paragraph 1 of the Copyright Law of the People's Republic of China provides, “[t]he natural person, legal person or unincorporated organization whose name is affixed to a work shall, without contrary proof, be the author of the work and have corresponding rights in the work.” Article 7, Paragraph 1 of the Interpretation of the Supreme People's Court Concerning the Application of Laws in the Trial of Civil Disputes over Copyright provides, “[t]he work papers concerning copyrights provided by the parties in question, originals, and legitimate publications, registration certificate of the copyrights, certificates issued by the authentication institution and the contracts obtained may be taken as evidence.” In the absence of valid evidence to the contrary and according to the registration certificates and images of the work provided by Plaintiff, the right of authorship to the disputed Ultraman work belongs to the third party, the Tsuburaya Productions. According to the “Authorization Certificate” and “Supplementary Authorization Certificates” signed by the Tsuburaya Productions and Plaintiff, Plaintiff enjoys the exclusive right of authorship to artworks that contain imageries of the Ultraman series during the licensing term and within the licensing scope. Specifically, Plaintiff's exclusive rights of reproduction, right of communication to the public on information networks, right of adaptation, and other exclusive rights encompass the licensed work and the work's title, character names, character images, signature symbols, props, settings, and other artistic characteristics and elements. In addition, Plaintiff has the independent right to enforce [the rights of authorship in Ultraman].

一、被告是否侵犯了原告的复制权、改编权和信息网络传播权

1. Whether Defendant Infringed upon Plaintiff's Right of Reproduction, Right of Adaptation, and Right of Information Network Dissemination

就被告在提供服务过程中生成案涉生成图片是否侵犯上述三项权利的问题，本院具体分析

如下：

In regard to whether Defendant's generation of the disputed generated images, during the process of providing services, infringed upon the three aforementioned rights, this court provides detailed analysis as follows:

（一）关于被告是否侵犯原告复制权的问题

(1) The Issue Regarding Whether Defendant Infringed upon Plaintiff's Right of Reproduction

《中华人民共和国著作权法》第十条第一款第五项规定：“著作权包括下列人身权和财产权：……（五）复制权，即以印刷、复印、拓印、录音、录像、翻录、翻拍、数字化等方式将作品制作一份或者多份的权利；……”案涉奥特曼作品享有较高的知名度，且其可在爱奇艺等各大视频网站进行访问、查阅及下载，在被告无相反证据的情况下，被告存在接触案涉奥特曼作品的可能性。原告所提供的、由 Tab 网站生成的案涉图片，部分或完全复制了“奥特曼”这一美术形象的独创性表达。因此，被告未经许可，复制了案涉奥特曼作品，侵犯了原告对案涉奥特曼作品的复制权。

Article 10, Paragraph 1, Term 5 of the Copyright Law of the People's Republic of China provides that “Copyright shall include the following personal rights and property rights: ... (5) the right of reproduction, that is, the right to produce one or more copies of the work by means of printing, photocopying, rubbing, sound recording, video recording, duplicating, re-shooting, or digitalization etc.;” The disputed Ultraman work enjoys high reputation, and it could be visited, looked-up, and downloaded, on iQYI and other well-known video-sharing websites. Under the condition that Defendant has not provided evidence to the contrary, it is possible for Defendant to have had access the disputed Ultraman work. Plaintiff has provided the disputed images generated by the Tab website, which either in-part or entirely copied the original expression of the “Ultraman” artistic image. Hence, Defendant copied the Ultraman image without authorization, and thereby infringed upon Plaintiff's right of reproduction to the disputed Ultraman work.

（二）关于被告是否侵犯原告改编权的问题

(2) The Issue Regarding Whether Defendant Infringed upon Plaintiff's Right of Adaptation

《中华人民共和国著作权法》第十条第一款第十四项规定：“著作权包括下列人身权和财产权：……（十四）改编权，即改变作品，创作出具有独创性的新作品的权利；……。”案涉生成图片部分保留了“迪迦奥特曼复合型”作品的独创性表达，并在保留该独创性表达的基础上形成了新的特征。被告上述行为构成对案涉奥特曼作品的改编。因此，被告未经许可，改编了案涉奥特曼作品，侵犯了原告对案涉奥特曼作品的改编权。

Article 10, Paragraph 1, Term 14 of the Copyright Law of the People's Republic of China provide that "Copyright shall include the following personal rights and property rights: ... (14) the right of adaptation, that is, the right to modify a work for the purpose of creating a new work of original creation; ..." The generated image at issue partially preserved the original expression of the "Ultraman Tiga (Multi Type)" and added new features. The aforementioned conduct of Defendant constitutes the adaptation of the disputed Ultraman work. Hence, Defendant adapted the disputed Ultraman work without authorization, and Defendant thereby infringed upon Plaintiff's right of adaptation to the disputed Ultraman work.

(三) 关于原告主张被告侵犯其信息网络传播权的问题

(3) The Issue Regarding Whether Defendant Infringed upon Plaintiff's Right of Information Network Dissemination

《中华人民共和国著作权法》第十条第一款第十二项规定：“著作权包括下列人身权和财产权：（十二）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；判定被告是否侵犯复制权和改编权，还是信息网络传播权，该问题仅涉及侵犯具体著作权权利的认定，并不影响其侵权行为成立与否，即不会对权利人与社会公众利益造成实质性的影响。对原告关于另行侵犯信息网络传播权的主张，考虑到本案是生成式人工智能发展背景下生成物侵权的新情况，且本院已支持了其复制权、改编权侵权的主张，在同一被诉侵权行为已经纳入复制权、改编权控制范畴的情况下，本院不再进行重复评价。

Article 10, Paragraph 1, Term 12 of the Copyright Law of the People's Republic of China provides that "Copyright" shall include the following personal rights and property rights: ... (12) the right of dissemination via information networks, that is, the right to provide works that may be obtained by the public at the time and place selected by the public by wired or wireless means; ..." The issue regarding whether Defendant infringed upon Plaintiff's right of reproduction and right of adaption, or the right of dissemination via information networks, only involves the determination of specific right of authorship. However, the issue does not have any effect on determining whether Defendant's conduct constituted infringement, and it does not have any substantial impact on right holders or public interest. Regarding Plaintiff's separate claim against Defendant's infringement upon its right of dissemination via information networks, this court will not repeat its analysis, because this case centers around the novel issue about AI-generated content, against the backdrop of the greater generative AI development. Furthermore, this court has supported the Plaintiff's claims concerning the infringement of its right of reproduction and right of adaption, and Defendant's infringing conduct was analyzed within the scope of Plaintiff's right of reproduction and right of adaption. Hence, this court will not repeat its analysis respecting this matter.

二、被告应当承担何种民事责任

2. What Civil Liabilities Does Defendant Incur

根据《中华人民共和国著作权法》第五十二条和第五十三条的规定，被告的行为侵害了原告对案涉奥特曼作品享有的复制权、改编权，依法应承担停止侵害、赔偿损失等民事责任。本院具体分析如下：

Pursuant to Article 52 and Article 53 of the Copyright Law of the People's Republic of China, Defendant's conduct infringed upon Plaintiff's reproduction and adaptation rights in the disputed Ultraman work. Defendant assumes the responsibility to cease such infringement, and to compensate for injury, in addition to other civil liabilities. This court's specific analysis is as follows:

(一) 关于停止侵害的问题

(1) The Issue Regarding Ceasing the Infringement

本案中原告要求被告停止生成侵权图片，并将案涉奥特曼物料从其训练数据集中删除。2023年7月13日，国家网信办联合国家发展改革委、教育部、科技部、工业和信息化部；公安部、国家广电总局公布《生成式人工智能服务管理暂行办法》，自2023年8月15日起施行。这是中国首次对生成式人工智能研发及服务作出专门规定。该办法第二十二条第二款规定“生成式人工智能服务提供者，是指利用生成式人工智能技术提供生成式人工智能服务（包括通过提供可编程接口等方式提供生成式人工智能服务）的组织、个人。”按照被告的陈述；其系通过可编程接口的方式接入第三方服务商的系统，进而向用户提供生成式人工智能服务，因此，被告属于生成式人工智能服务提供者（以下简称服务提供者）。按照该办法第十四条第一款规定，“提供者发现违法内容的，应当及时采取停止生成、停止传输、消除等处置措施，采取模型优化训练等措施进行整改，并向有关主管部门报告。”本案中，被告作为服务提供者，侵犯了原告对案涉奥特曼作品所享有的著作权，应承担停止侵权，即停止生成的责任。关于被告主张AI绘画服务系由第三方服务商提供，其不承担责任的抗辩，本院不予采纳。

In this case, Plaintiff requested Defendant to cease generating the infringing image and delete the disputed Ultraman material from its machine learning database. On July 13, 2023, the Cyberspace Administration of China, together with the National Development and Reform Commission, the Ministry of Education, the Ministry of Science and Technology, the Ministry of Industry and Information Technology, the Ministry of Public Security, and the State Administration of Radio, Film and Television, issued the Interim Measures for the Administration of Generative Artificial Intelligence Services, which was implemented beginning August 15, 2023. The Interim Measure is the first set of specific regulations that China has promulgated in regard to artificial intelligence research and services. Article 22, Paragraph 2, of the Interim Measure provides that “[t]he term “generative AI service provider” means any organization or individual that uses generative AI technology to provide generative AI services (including providing generative AI services by providing programmable interfaces).” According to Defendant's statement, it provides users with AI service by accessing the

third-party service provider's system through a programming interface. Therefore, Defendant is classified as an AI service provider (hereinafter referred to as service provider). Article 14, Paragraph 1, of the Interim Measure provides that "[w]here a provider discovers illegal content, it shall promptly take disposal measures such as stopping generation, stopping transmission or eliminating the illegal content, make rectification through measures such as model-based optimization training, and report to the relevant competent department." In the case at hand, Defendant, as a service provider, infringed upon Plaintiff's right of authorship in the disputed Ultraman work, and thus assumes the liability to cease infringing conduct, which means ceasing content generation. This court rejects Defendant's argument that the AI graphics generation service was provided by a third party and that it therefore does not assume any liability.

根据生成式人工智能的技术原理，不采取一定的技术防范措施，被告所经营的 Tab 能够继续生成与案涉奥特曼作品实质性相似的图片，故对于原告要求被告停止生成的诉请，本院予以支持。被告应采取技术性措施来停止生成与案涉奥特曼作品实质性相似的图片。

According to technical principles of generative AI, Defendant's business, Tab, could continue to generate images similar to the disputed Ultraman work if Defendant does not adopt certain technical preventative measures. Since Plaintiff requested Defendant to cease content generation, this court supports Plaintiff's request. Defendant should cease generating content that is substantially similar to the disputed Ultraman work using technical preventive measures.

本案中，被告已经采取关键词过滤等措施，停止生成相关图片，并达到了一定效果。然而，庭审中，在原、被告双方见证下，当向 Tab 输入与奥特曼相关的其他关键词时，仍可产生实质性相似的图片。因此，被告应进一步采取关键词过滤等措施，防范其服务继续生成与案涉奥特曼作品实质性相似的图片，防范程度应达到：用户正常使用与奥特曼相关的提示词，不能生成与案涉奥特曼作品实质性相似的图片。

In this case, Defendant has adopted keyword filters and other measures to prevent generating similar images with relative effectiveness. However, both Plaintiff and Defendant witnessed on trial that similar content could still be generated on Tab when keywords related to Ultraman were entered. Therefore, Defendant should further adopt keyword filters and other measures to prevent its service from generating more images similar to the disputed Ultraman work. The degree of preventative measures should be: when a user enters keywords related to Ultraman under ordinary circumstances, images substantially similar to the disputed Ultraman work can no longer be generated.

关于原告将案涉奥特曼物料从其训练数据集中删除的诉请，因被告并未实际进行模型训练行为，本院对该项诉请不予支持。

Regarding Plaintiff's request to delete the disputed Ultraman materials from its model training database, this court will not support this request because Defendant did not conduct any model training.

(二) 关于应否赔偿损失的问题

(2) The Issue Regarding Whether Compensatory Damages are Available

原告要求被告赔偿其经济损失及为制止侵权而支出的合理费用。赔偿损失责任的承担需要考虑被告的过错问题。相关类案判决认为，生成式人工智能具有一定的工具属性。生成式人工智能既可以用于合法目的，也可以用于非法目的。《生成式人工智能服务管理暂行办法》第四条强调，生成式人工智能服务提供者应当遵守法律、行政法规，尊重社会公德和伦理道德，应当尊重知识产权。因此，服务提供者在提供生成式人工智能服务时应尽合理的注意义务。但在本案中，被告作为服务提供者未尽到合理的注意义务。本院具体分析如下：

Plaintiff requested Defendant to compensate it for its economic losses and the reasonable expenditures it incurred for infringement prevention. The liability to compensate Plaintiff for its injuries shall be considered based on the analysis of Defendant's fault. Judgments in similar cases have held that AI has certain tool-like attributes. Generative AI can be used for both legal and illegal ends. Article 4 of the Interim Measures for the Administration of Generative Artificial Intelligence Services emphasizes that providers of generative AI services shall observe laws and administrative regulations, and respect social morality and ethics. Providers shall also respect intellectual property rights. Therefore, service providers should be reasonably cautious when fulfilling their duties providing generative AI services. However, in this case, Defendant has not fulfilled its duties as a service provider. This court's specific analysis is as follows:

第一，投诉举报机制的欠缺。《生成式人工智能服务管理暂行办法》第十五条规定：“提供者应当建立健全投诉、举报机制，设置便捷的投诉、举报入口，公布处理流程和反馈时限；及时受理、处理公众投诉举报并反馈处理结果。”结合本案认定事实，特别是本院当庭查明情况，截至开庭之日，被告经营的 Tab 网站并未建立相关投诉举报机制，使得权利人难以通过投诉举报机制来保护其著作权。

First, there is a lack of any complaint or reporting mechanism. Article 15 of the Interim Measures for the Administration of Generative Artificial Intelligence Services stipulates that “A provider shall establish and improve a complaint and reporting mechanism, set up a convenient complaint and reporting portal, announce handling procedures and time limits for feedback, accept and handle public complaints and reports in a timely manner, and provide feedback on the handling results.” According to the facts of this case, especially the circumstances determined by this court on trial, Defendant's Tab website has yet to establish any relevant complaint and reporting mechanism since the start of trial. Therefore, it is difficult for right holders to protect their right of authorship through a complaint and reporting mechanism.

第二，潜在风险提示的欠缺。《生成式人工智能服务管理暂行办法》第四条规定：“提供和

使用生成式人工智能服务，应当遵守法律、行政法规，尊重社会公德和伦理道德，遵守以下规定：...了（三）尊重知识产权、商业道德，保守商业秘密，不得利用算法、数据、平台等优势，实施垄断和不正当竞争行为；.....（五）基于服务类型特点，采取有效措施，提升生成式人工智能服务的透明度，提高生成内容的准确性和可靠性。”本案中，被告作为服务提供者未以服务协议等方式提示用户不得侵害他人著作权。而与一般的网络服务存在显著区别的是，一般而言，用户在使用生成式人工智能服务时，对他人特别是著作权人的潜在侵权风险缺乏明确认知，因此生成式人工智能服务提供者有义务对用户进行提示，这其中就包括用户不能利用其服务侵犯他人著作权。第三，显著标识的欠缺。《生成式人工智能服务管理暂行办法》第十二条规定：“提供者应当按照《互联网信息服务深度合成管理规定》对图片、视频等生成内容进行标识。”《互联网信息服务深度合成管理规定》第十七条规定：“深度合成服务提供者提供以下深度合成服务，可能导致公众混淆或者误认的，应当在生成或者编辑的信息内容的合理位置、区域进行显著标识；向公众提示深度合成情况：.....（五）其他具有生成或者显著改变信息内容功能的服务。”生成式人工智能服务提供者在生成物可能导致公众混淆或者误认的情况下，有义务对其提供的生成物进行显著标识。经标识后，有关权利人能够明确认识到生成物系由人工智能生成，进而采取更具针对性和有效的维权措施，更好地保护其权利。因此，标识义务不仅是对公众知情权的尊重，也是对权利人的一种保护性义务。就本案而言，被告并未显著标识案涉生成图片，未尽标识义务。

Second, there is a lack of potential risk notifications. Article 4 of the Interim Measures for the Administration of Generative Artificial Intelligence Services provides that “[f]or the provision and use of generative AI services, laws, and administrative regulations shall be observed, social morality and ethics shall be respected, and the following provisions shall be complied with: ... (3) Intellectual property and business ethics shall be respected, and business secrets shall be kept. It is prohibited to implement monopoly or unfair competition by taking advantage of algorithms, data, and platforms; ... (5) Effective measures shall be taken based on the service types and characteristics to make generative AI services more transparent and generated content more accurate and reliable.” In this case, Defendant, as a service provider, did not notify users to refrain from infringing upon others’ right of authorship through user agreements or other means. Distinctly different from other online services, generative AI services users, generally speaking, lack the adequate understanding of the underlying risk of infringement upon the rights of others, especially copyright infringement. Therefore, generative AI service providers are obligated to notify users of potential risks, including the fact that users are prohibited to use such services to infringe upon others’ right of authorship. Third, there is a lack of distinctive labels. Article 12 of the Interim Measures for the Administration of Generative Artificial Intelligence Services provides that “[a] provider shall label the generated content, such as images and videos, in accordance with the Provisions on the Administration of Deep Synthesis of Internet-based Information Services.” Article 17 of the Provisions on the Administration of Deep Synthesis of Internet-based Information Services provides that “[I]f a deep synthesis service provider provides the following deep synthesis services, which may lead to confusion or misunderstanding by the public, it

shall prominently mark the reasonable location and area of the generated or edited information to remind the public of the circumstances for deep synthesis: ... (5) Other services that may generate or significantly alter information content.” When generative AI content could result in misunderstanding or misidentification by the public, generative AI service providers are obligated to provide the generated content with conspicuous labels. After labeling, relevant right holders would accurately recognize that the labeled content was AI-generated, thereby adopting specific and effective measures to protect their rights. Hence, the labeling obligation is not only a form of respect to the public’s right to know, but it is also an obligation to safeguard rightsholders. As of this case, Defendant did not provide any labels to the disputed generated images, and thus it did not fulfill its labeling obligations.

综上所述，被告未尽到上述注意义务，主观上存在过错，因此应对侵权行为承担相应的赔偿责任。

In sum, Defendant did not fulfill the aforementioned obligations, and thus it is subjectively at fault. Therefore, Defendant shall compensate [Plaintiff] for the damages caused by its infringing conduct.

（三）关于确定赔偿数额的问题

（3） The Issue Regarding the Ascertainment of the Damages Amount

《中华人民共和国著作权法》第五十四条第一、二、三款分别规定：“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。对故意侵犯著作权或者与著作权有关的权利，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下给予赔偿。”“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”“赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。”本案中，根据现有证据无法确定原告因案涉侵权行为所遭受的实际损失或被告的违法所得。本院综合考虑以下等因素对赔偿数额进行酌定：一是案涉奥特曼作品具有较高的市场知名度；二是被告在应诉后，积极采取技术性措施，防范继续生成相关图片，且实现了一定的效果；三是被告仅面向用户生成案涉图片，影响范围有限；四是原告因维权确实发生了取证费支出，结合费用支出的合理性、必要性，本院酌情予以部分支持。综上，本院依法酌定被告向原告赔偿经济损失 10000 元（含合理开支）。

Article 54, Paragraphs 1, 2, and 3 stipulate respectively that “[a]n infringer infringing upon copyright or copyright-related rights shall make compensation on the basis of the right holder’s actual losses arising therefrom or the illegal gains of the infringer; and where the right holder’s actual losses or the infringer’s illegal gains are difficult to be calculated, compensation may be made on the basis of royalties. For deliberate infringement upon copyright or copyright-related rights, if circumstances are serious, compensation may be made on the basis of an amount not less than one time nor more than

five times the amount determined by the aforesaid methods.” “Where the right holder’s actual losses or the infringer’s illegal gains and royalties are difficult to be calculated, the people’s court shall, on the basis of the seriousness of the tort, award compensation of not less than 500 yuan nor more than 5 million yuan.” “The amount of compensation shall include the reasonable expenses paid by the right holder for stopping the tort.” In this case, the actual damages and Defendant’s illegal proceeds cannot be determined based on the presently available evidence. This court considered the following factors to determine the damages amount: first, the disputed Ultraman work possesses relatively significant market visibility; second, Defendant, after its response to the lawsuit, actively adopted technological measures to prevent the continuation of such content’s generation with relative effectiveness; third, Defendant only provided the disputed images to its users, and thus the infringement had a limited scope of influence; Fourth, Plaintiff incurred expenditures when collecting evidence to protect its rights, and this court has the discretion to support a portion of its expenses according to the their reasonableness and necessity. In sum, this court has determined that Defendant is to compensate Plaintiff’s economic losses of 10000 Yuan (which includes reasonable expenses).

经审本案，本院需要强调的是，人工智能是引领未来的战略性技术，是新一轮科技革命和产业变革的核心驱动力，被认为是发展新质生产力的主要阵地。我国人工智能技术快速发展、数据和算力资源日益丰富、应用场景不断拓展，为开展人工智能场景创新奠定了坚实基础。考虑到生成式人工智能产业正处于发展的初期，需要同时兼顾权利保障和产业发展，不宜过度加重服务提供者的义务。在技术的飞速发展过程中，服务提供者应当主动积极履行合理的、可负担的注意义务，从而为促进形成安全与发展相济、平衡与包容相成、创新与保护相容的中国式人工智能治理体系提供助益。

After reviewing this case, this court emphasizes that AI is a strategic technology that will lead to future advancement. It is the core driving force for a new round of scientific and technological revolution and industrial transformation, and it is considered to be the main force in generating new quality productive forces. Our nation has undergone rapid development in AI technology. Data and computational resources have become increasingly rich, and new technological developments have become widely applicable. This has set a solid foundation for broadening the scope of AI scenarios. Since the generative AI industry is still at its early stage of development, it is unwise to overburden service providers with duties. In the process of rapid technological development, service providers should actively take reasonable, affordable precautions, thereby promoting the Chinese-style AI regulatory system that is safe and developing, balanced and inclusive, and innovative and protective.

综上所述，依照《中华人民共和国著作权法》第二条第二款、第十条、第十二条、第五十二条、第五十三条、第五十四条，《最高人民法院关于审理著作权民事纠纷案件适用法律若干问题的解释》第七条第一款、第二十六条，《中华人民共和国民事诉讼法》第六十七条第一款，《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第九十条之规定，判决

如下：

In summary, pursuant to Article 2, Paragraph 2, Term 10, Article 10, Article 12, Article 52, Article 53, and Article 54 of the Copyright Law of the People's Republic of China; Article 7, Paragraph 1, and Article 26 of the Interpretation of the Supreme People's Court Concerning the Application of Laws in the Trial of Civil Disputes over Copyright; Article 67, Paragraph 1 of the Civil Procedure Law of the People's Republic of China; Article 90 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, the judgment is as follows:

一、被告 AI 公司于本判决发生法律效力之日起立即停止侵害原告上海新创华文化发展有限公司案涉奥特曼作品著作权的行为，立即采取相应技术措施，在提供服务过程中防止用户正常使用时，生成侵犯原告上海新创华文化发展有限公司案涉著作权的图片。

(1) Defendant AI company is to cease any infringing conduct against the right of authorship in the Ultraman image of Plaintiff, Shanghai Character License Administrative Co, Ltd., when this judgment becomes legally effective. Defendant is to adopt relevant technological measures when providing services to users in order to prevent the generation of content that will infringe upon the right of authorship in the disputed Ultraman image of Plaintiff, Shanghai Character License Administrative Co, Ltd.

二、被告 AI 公司于本判决发生法律效力之日起十日内赔偿原告上海新创华文化发展有限公司 10000 元（含合理开支）；

(2) Defendant AI company is to compensate Plaintiff, Shanghai Character License Administrative Co, Ltd., in the amount of 10000 Yuan (which includes reasonable expenditures) within 10 days after this judgment becomes legally effective.

三、驳回原告上海新创华文化发展有限公司的其他诉讼请求。

(3) The other requests submitted by Plaintiff, Shanghai Character License Administrative Co, Ltd., are rejected.

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》第二百六十四条之规定，加倍支付迟延履行期间的债务利息。案件受理费 2900 元，由原告上海新创华文化发展有限公司负担 1400 元，被告 AI 公司负担 1500 元，并于本判决发生法律效力之日起十日内迳付给原告上海新创华文化发展有限公司。

If Defendant does not pay Plaintiff the monetary damages ordered by this judgment within the provided time period, according to Article 264 of the Civil Procedure Law of the People's Republic of China, Defendant will be subject to double interest of debts during the period of deferred performance. The case acceptance fee is 2900 Yuan. Plaintiff, Shanghai Character License Administrative Co, Ltd., is responsible for 1400 Yuan, and Defendant AI company is responsible for 1500 Yuan, which should

be paid to Plaintiff, Shanghai Character License Administrative Co, Ltd., within 10 days after this judgment becomes legally effective.

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，并按对方当事人的人数提出副本，上诉于广州知识产权法院。

If any party refuses to accept the judgment, he or she may appeal to the Guangzhou Intellectual Property Court by submitting a written appeal to this court within 15 days after service of the judgment, and he or she must provide the copies of the appeal document in accordance with the number of the opposing parties.

依照《中华人民共和国民事诉讼法》第四十一条第二款规定，符合条件的二审案件，经双方当事人同意，可以由审判员一人独任审理。提起上诉的一方当事人如不同意适用独任制，请于上诉状中明确提出，未提出的，视为同意；被上诉人如不同意适用独任制，请于上诉答辩期间内书面向本院提出，未提出的，视为同意。

Pursuant to Article 41, Paragraph 2 of the Civil Procedure Law of the People's Republic of China, following consent by both parties, a case that satisfies the requirements for appeal may be granted sole trial decided by the judge alone. If the appellant disagrees with the application of sole-judge trial, he or she may clearly indicate so in the appeal petition. If no disagreement is raised, the appellant is deemed to have consented. If the respondent disagrees with the application of sole-judge trial, he or she may indicate so in written form to this court during the pleading period of the appeal. If no disagreement is raised, the respondent is deemed to have consented.

审 判 员 田 绘
Judge Hui Tian

二〇二四年二月八日
February 8, 2024

本件与原本核对无异

This document is identical to the original.

法 官 助 理 许燕玲
法 官 助 理 陈 芊
书 记 员 陈耀宗
Judicial Assistant Yanling Xu
Judicial Assistant Qian Chen
Law Clerk Yaozong Chen