

Exploring the Purpose of Protecting Folk Literary and Artistic Expressions: A Multidimensional Protection Framework for China

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Abstract: There are many difficulties in protecting the expression of folk literature and art, and it is difficult to reach a consensus in the world. Through a comprehensive analysis of international conventions, domestic laws, and academic literature, this study establishes a multidimensional theoretical framework for evaluating the effectiveness of existing laws in China in protecting folk literature and art, illustrates the shortcomings of existing legal frameworks, and proposes innovative protection strategies. This article first defines the concept of folk literary and artistic expressions and analyzes their relationship with intangible cultural heritage. It highlights the international political context for the protection of folk literary and artistic expressions, as well as the challenges faced by China. The study argues that the traditional copyright protection model is not suitable for folk literary and artistic expressions. Instead, a comprehensive legal framework is needed, integrating laws on intangible cultural heritage, innovating protection models, strengthening international cooperation, utilizing technological means, raising public awareness, and developing the use of folk literary and artistic expressions.

Keywords: Folk Literary and Artistic Expressions, Intangible Cultural Heritage, Copyright Law, International Politics, Purpose of Protection.

1. Introduction

The protection of folk literary and artistic expressions is a topic that is particularly critical in the context of globalization. The global flow of cultural resources puts folk literary and artistic expressions at risk of misinterpretation, misuse, or even plagiarism [1]. As a cultural powerhouse, China's rich folk literary and artistic expressions urgently need effective protection and inheritance. The protection of the expression of folklore is generally divided into three theories in the world: absolute protection theory represented by developing countries, negative copyright protection theory represented by developed countries and relative protection theory [2]. It can be seen that the main promotion of the protection of folklore and artistic expression is from developing countries. To date, developing countries, represented by China, have actively proposed the protection of folk literary and artistic expressions and passed some regulations and drafts. In its laws, China has also expressed its intention to protect folk literary and artistic expressions, but the implementation of these regulations

faces many difficulties and has not made breakthrough progress. Through a comprehensive analysis of international conventions, domestic laws and academic literature, combined with international political background and domestic cases related to the expression of folk literature and art, this paper will find out the purpose of protecting the expression of folk literature and art in China today, and put forward ideas for protecting the expression of folk literature and art. Based on the research findings from existing academic literature, international conventions, and laws, this paper highlights the distinctions between the primary protection objectives for Chinese folk literature and art expression at both international and domestic levels. Based on the existing purposes, the author puts forward a comprehensive and innovative protection strategy in legal protection mode. This study is helpful to provide some suggestions and thoughts for promoting the establishment and improvement of the protection framework of Chinese folk literature and art expression, and promoting the construction of a stable long-term mechanism for the protection of folk literature and art expression.

2. Expression of Folk Literature and Art and Intangible Cultural Heritage

Folk literary and artistic expressions, also known as folk literary and artistic works, are concepts within copyright law [3]. There is still no unified answer to the definition of folk literary and artistic expressions, and its boundaries remain difficult and vague. The "Regulations on the Protection of Copyright in Folk Literary and Artistic Works (Draft for Comments)" (hereinafter referred to as the "Regulations") define it as literary and artistic expressions collectively created by unspecified members of a particular nation, ethnic group, or community and passed down through generations, reflecting their traditional concepts and cultural values. Based on its characteristics, which can be determined currently by folk literary and artistic expressions, this paper thinks its connotation can be described as: Folk literary and artistic expressions refer to literary and artistic forms with constant evolution created by unspecified members (including families and individuals) within a particular nation, ethnic group, or community and passed down through generations in non-written forms, reflecting their traditional concepts and cultural values. Meanwhile, Article 2 of the Intangible Cultural Heritage Law of the People's Republic of China defines intangible cultural heritage, that is, intangible cultural heritage refers to various traditional cultural expressions passed down from generation to generation by people of all ethnic groups and regarded as part of their cultural heritage, as well as objects and places related to traditional cultural expressions.

2.1. Similarity Discussion and Difference Analysis

Both have the same characteristics of cultural value, inheritance, diversity and so on. Both folk literature and art and intangible cultural heritage embody the cultural values and historical traditions of a country or nation. Both emphasize generational inheritance, reflecting the continuity and dynamic development of culture. They are all diverse, reflecting the cultural characteristics of different regions, peoples or communities [4]. Despite their similarities, it is important to distinguish between the two concepts and avoid mixing them. Folk literature and art usually refers to literature and art created and transmitted orally, emphasizing non-written forms and only including literature and art, such as folk songs, folk stories, while the intangible heritage has no non-written requirements on the form, and the scope is wider. Intangible cultural heritage also includes folk customs such as traditional skills, medicine, calendars, sports, rituals and festivals, as well as cultural relics and objects and places that are part of the intangible cultural heritage. On a conceptual scale, intangible cultural heritage includes folk literature and art [5].

2.2. The Reasons and Significance of the Expression of Folk Literature and Art Separately

While the Law of the People's Republic of China on Intangible Cultural Heritage provides the general framework, the protection of folk literature and art may require more specific policies and regulations to guide implementation, including the protection of specific types of works and the identification and support of specific inheritors. The protection of folk literature and art may require more diversified strategies, including but not limited to recording, digitization, popularization of education, and living inheritance. These strategies may require special attention and implementation details. The protection of intangible cultural heritage is a broad field with limited resources. A separate discussion of the protection of folklore helps to set priorities, allocate resources rationally and ensure that adequate attention is given to cultural heritage that is most in need of protection.

3. The Purpose of Protecting the Expression of Folk Literature and Art

3.1. International Political Background

The purpose of folk art protection will change as history progresses. Initially, African countries emerging from colonial rule used the preservation of folk art as a tool to affirm their cultural identity and political aspirations. As time goes by, developed countries generally have a short history and a relative lack of traditional culture, while most developing countries have a long history and a rich traditional culture. However, due to the immaturity and lack of technology in commercial entertainment and other industries in developing countries, they are unable to make full use of these cultural treasures. When we see that developed countries use the folk literature and art of developing countries to gain a lot of economic benefits, for example, China's Mulan Poem was adapted by the US Disney Company into a commercial cartoon called Mulan, which gained a staggering box office of 2 billion US dollars worldwide, developing countries also want to share some of the economic benefits. The purpose of protection has gradually changed to the demand for property rights, that is, to prevent folk literature and art from being used free of charge through legislative protection, and to obtain economic benefits from it. However, during the implementation process, it becomes clear that the impact of legislative protection is limited to the national scope, effective sanctions against foreign infringements are unattainable, and all countries worldwide must strive to achieve international protection. The difficulty of implementation and the poor international environment make it almost impossible for folk art to express property rights claims. The protection of folk art has become a tool for developing countries to fight against developed countries in the field of international intellectual property rights, especially for the protection and utilization of cultural resources. In recent years, the international community's focus on the protection of folk art has gradually shifted from economic rights to the protection of spiritual rights, especially to prevent folk art abuse and distortion.

3.2. The Purpose of Protecting the Expression of Folk Literature and Art in China Today Under the Influence of International Political Background

In recent 20 years, American film and television companies have adapted Chinese folk stories to spread the spiritual core of American individual heroism, and South Korea has repeatedly appropriated Chinese elements in an attempt to imposter cultural sources, such as kpop girl group IVE stealing cultural events (in the MV, a large number of Chinese traditional elements such as auspicious clouds, embroidered shoes, banana fans, landscape paintings, copper coins and even Chinese knots are used to promote Korean culture). China's traditional cultural resources are used freely and arbitrarily, and even misappropriated, abused and other improper use phenomena emerge endlessly, but there is a lack of effective relief measures under the current framework of rules [6]. Moreover, there are many complex systems of traditional culture in our country, not to mention

foreign countries. Even the Chinese people's understanding of traditional culture is far from enough, so the phenomenon of domestic and foreign people's misunderstanding of traditional Chinese culture is bound to occur, which gives countries that attempt to steal other countries' culture an opportunity to take advantage of. It can be said that China is currently in a state of internal and external aggression to protect its traditional culture. The dispute between countries is the most prominent dispute over "original works of folk literature and art".

According to its development stage, the expression of folk literature and art can be divided into three levels: "original works of folk literature and art," "collated works of folk literature and art" and "derivative works of folk literature and art". Through the study of typical cases involving folk literature and art works in China, it is found that the litigation disputes are basically the problems of plagiarism and unauthorized adaptation of "folk literature and art collated works" and "folk literature and art derivative works", and rarely involve the disputes of "folk literature and art original works" [7][8]. The aforementioned analysis indicates that China's current protection strategy should prioritize safeguarding the sources and contents of folk literature and art from misinterpretation and misuse, as well as promoting these works to bolster Chinese culture's global impact, with property rights taking a secondary role. In China, the focus of protection should be to solve disputes over private rights and to protect the copyright of "folk literature and art collated works" and "folk literature and art derivative works." [2].

4. Unreasonable Single Copyright Protection

"The expression of folk literature and art originates from the people, and has the characteristics of inheritance, rheology, uncertainty in the scope of expression, collectivity of the creation subject, and the derivation of the creation behavior. Its protection mode should be able to maintain these own characteristics; otherwise it is meaningless." [9] There are obvious limitations and deficiencies in the protection of copyright law in the expression of folk literature and art. First, the term of protection under copyright law is usually limited, while folklore and artistic expressions, as a kind of cultural heritage, often require longer-term protection. Many scholars believe that the period of protection of folklore expression should be indefinite [10]. Secondly, the objects protected by copyright law are usually clear works and authors, but the creative subjects expressed by folk literature and art are often unclear collectivities, which makes it difficult for copyright law to determine the ownership of rights and the way of exercising rights [11]. In addition, copyright law mainly protects the form of expression of the work, rather than the cultural value and traditional knowledge contained in the work, which may lead to insufficient protection for the expression of folk literature and art. To sum up, single copyright law protection has applicability problems in the face of the expression of folk literature and art, and its protection mechanism itself has limitations and deficiencies, which need to be solved through a more comprehensive and innovative legal protection mode.

5. Legislative Protection Strategies Under the Comprehensive Legal Framework

In the protection strategy of folk literature and art works, it is essential to construct a comprehensive legal framework. To ensure adequate protection of folklore works at both public and private levels, it is necessary to integrate copyright law and intangible cultural heritage law. In addition, other relevant laws together constitute a multi-layered network of protection. To achieve comprehensive protection, we need to build a multi-dimensional protection system that includes innovative protection models, enhanced international cooperation, technological means for digital protection, public awareness raising, and the development and use of folk literature and art works to prevent their abuse. These measures aim to promote the dissemination, inheritance, and rational use of folk literature and art

works through education, publicity, technological development, and policy incentives, while protecting them from infringement.

5.1. The Combination of Copyright Law and Intangible Cultural Heritage Law

According to Professor Yi Ling's research, "In the legislative process of folk literature and art, the Intangible Cultural Heritage Law promulgated in 2011, from the perspective of protecting cultural diversity, has initially set up a public law protection framework for folk literature and art with general survey, record, preservation and inheritance as the main measures" [6]. This shows that the intangible cultural heritage law provides a certain degree of public law protection for folk literature and art. However, the lack of protection of private law makes folk literature and art vulnerable to improper use and damage under the conditions of the market economy. Therefore, the intervention of copyright law is very important to supplement and perfect the protection of the private law of folk literature and art. By clarifying the copyright ownership, scope of rights and protection period of folk literature and art works, we can better promote their transmission and inheritance.

5.2. The Role of Other Relevant Laws

In addition to copyright law and intangible cultural heritage law, other relevant laws also play an important role in the protection of folk literature and art works. For example, the Model Law on Domestic Law for the Protection of Artistic Expressions of Folklore against Unfair Exploitation and Other Injurious Acts (the Model Law) provides specific protection measures for artistic expressions of folklore. In addition, international conventions such as the WPPT (World Intellectual Property Organization Treaty on Performances and Phonograms) and the Beijing Treaty also provide protection for performers' rights, which is particularly important in folklore and art works, as many works are passed down through performance. In domestic law, contract law can regulate the authorized use, transfer and profit distribution of folk literature and art works. Trademark law and anti-unfair competition law can prevent malicious squatting and commercial abuse of folk literature and art works; Criminal law can punish serious violations. These laws together constitute a multi-level protection network, providing all-round legal protection for folk literature and art works.

5.3. Building a Multi-dimensional Protection System

Constructing a multi-dimensional protection system is the key to realize the comprehensive protection of folk literature and art works. (1) Therefore, innovative protection models are needed, for example, by identifying the separation relationship between folk literature and art works and modern works, the overall construction of relevant information protection mechanism [12]. (2) Use technical means for digital protection and dissemination, such as the establishment of a database of folk literature and art works. (3) Raise public awareness, through education and publicity, to enhance the public's understanding of the value of folk literature and art works, as well as their awareness of protection. We will introduce a reward system for domestic and foreign propagandists expressing folk literature and art. (4) Development, utilization, One way to avoid the abuse of folk literature and artistic expression is to take the lead in developing and utilizing it, transforming it into high-quality works, and vigorously promoting it. In this way, on the one hand, the property benefits are enjoyed, and on the other hand, cultural sources are publicized before being used by other countries, reducing the damage of moral rights that are abused. (5) Strengthen international cooperation and exchange, starting with establishing in international treaties the obligation to use folklore as a source of expression.

6. Conclusion

The expression of folk literature and art is the treasure of human civilisation and the condensed wisdom of human beings in the long river of history. However, the expression of folk literature and art is easy to lose, easy to change, and also has enough value to become a tool for improper use. Therefore, legislation should protect the expression of folk literature and art. The research results of this paper suggest that China should implement a more comprehensive and innovative legal protection mode to safeguard the expression of folk literature and art. This would involve combining copyright law, intangible cultural heritage law, and other laws to form a multi-level protection network. Additionally, we should enhance the use of innovative protection models, strengthen international cooperation and exchanges to identify primary issues, utilize technological means, raise public awareness, engage in pre-emptive development, and utilize various means to establish a multi-dimensional protection system. Although this paper provides strategies to protect the expression of folk literature and art, there may be some challenges at the specific implementation level, such as the intensity of law enforcement and the depth and breadth of international cooperation. Future research could focus on how to refine these strategies and how to overcome possible obstacles in practice.

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