

# On the Copyright Protection of Folk Literature and Art Works

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**Abstract:** *Every nation has a specific cultural aesthetic and value inheritance. The Chinese nation has thousands of years of civilization history and precipitated a very deep cultural and artistic heritage. Each historical period presents different folk literature and art works, which are dazzling like milestones. Inheriting and carrying forward China's folk literature and art works is conducive to establishing cultural self-confidence and improving the country's cultural soft power. In recent years, the distortion and slander of Chinese folk literature and art works have occurred from time to time. The problems existing in the copyright protection of folk literary works need to be solved urgently. This paper first defines the concept of folk literature and art works, then studies the current situation of the protection of folk literature and art works, summarizes the problems existing in the copyright protection of folk literature and art works combined with specific cases, and finally puts forward specific countermeasures, so as to promote the healthy and long-term development of Chinese folk literature and art works.*

**Keywords:** *Folk Literature and art works; Copyright protection; Legal Perfection*

## 1. Introduction

In China's 5000 year history, people of 56 nationalities have condensed many folk literature and art works with labor and wisdom. These works are a true portrayal of human civilization and need to be inherited and carried forward as excellent traditional culture. However, there are malicious distortions and arbitrary adaptations in China's folk literature and art works. If the copyright of folk literature and art works is not protected, China's excellent traditional culture will face danger. At present, there are many deficiencies in the copyright protection law of folk literature and art works. There is a lack of relevant laws, and there is no specific provisions and perfect system, so it cannot play a good role in protection.

## 2. Definition of folk culture and art works

Folk literature and art works have been formed in the long history of 5000 years. All ethnic groups have created unique cultural and art works, which contain rich traditional culture and national characteristics. They are the cultural treasures of all countries. The concept of folk literature and art was first put forward by British humanist Thompson. He used the word "folklore" to describe folk literature and art, which has been widely recognized and used <sup>[1]</sup>. UNESCO explained the concept of Folklore: within the scope of a country, it is composed of all its literary, artistic and scientific works, which can be recognized as the uninterrupted cultural heritage created by the people and ethnic groups of the country. This definition is the most authoritative, but it is also very abstract because of its wide scope. To sum up, folk culture and art works are proposed for the concepts of academic art and literati art. Broadly speaking, folk art is an art created by workers to meet their own life and aesthetic needs, including folk arts and crafts, folk music, folk dance, opera and other art forms; In a narrow sense, folk art refers to folk plastic arts, including various forms of folk art and arts and crafts.

## 3. Protection status of folk culture and art works

Since the reform and opening up, the Chinese government and relevant departments have gradually paid attention to the protection of folk culture and art works, vigorously promoted excellent traditional culture, and promulgated a series of laws and regulations. However, the relevant legal protection is scattered in various regulations, and various regions issue some local regulations according to their

own conditions. Due to the large number of local nationalities and their own characteristics, the laws and regulations issued are intermingled and have different systems. In addition, the laws and regulations formulated by relevant departments are not perfect, which can not solve the problems brought by the rapid economic development. The occurrence of all kinds of infringement damages the rights of creators [2]. On the one hand, with the passage of time, the subjects enjoying rights are constantly developing and changing. On the other hand, whether some people create new works on the basis of folk literature and art works and create new works on the basis of adapters also enjoy copyright and get legal protection is also an issue to be discussed. In short, the current protection of folk literature and art works in China can be compared to a fledgling bird, which is immature and imperfect. It will take time to form a standardized protection.

#### **4. Summary and problem analysis of "Wusuli boat song case"**

##### **4.1. Brief introduction of the case**

The famous singer Guo song sang a traditional song with strong national flavor "Wusuli boat song". In the interactive session, Guo song stressed that this song is his original work, which mainly shows his love for his hometown and won warm applause from the audience. The party was a great success. In order to commemorate the event, the organizing committee will make a CD of the live song and dance performance of the event and distribute it to all performers and audiences. Because this song has a strong national style and characteristics, Beijing Beichen Shopping Center also published this song and sold its cover, making it clear that the original song of this song is Guo song. Folk artists in Sipai he Township, Raohe County, Heilongjiang Province, where the song originated, found that the song was a folk song of their hometown and asked the government departments to safeguard their rights and interests. Subsequently, the people's Government of Sipai he township of Raohe County, as the plaintiff, filed a lawsuit to the court to bring CCTV, Guo song and the seller Beichen Shopping Center to court, requiring the defendant to be found to have infringed copyright and compensate for corresponding losses. This case has aroused great concern. Everyone cares about how to make judgments. In the case of unclear legal provisions, the judgment of this case will bring some references to the academic and judicial circles. In the first instance, because the court found that the defendant plagiarized, held that his song was adapted from Hezhen folk songs, and made a ruling in favor of the township government, the three defendants assumed responsibility and received compensation. The defendant refused to appeal. In the appeal of the second instance, the defendant believed that the township government was not a qualified plaintiff and had no right to file corresponding lawsuits and questions. The court of second instance carefully studied the petition, consulted the relevant legal materials, made the judgment of second instance, determined that the township government could file a lawsuit on behalf of the Hezhen group and could be the plaintiff of the case, and upheld the judgment of first instance. Finally, the plaintiff and the town government won the lawsuit<sup>[3]</sup>.

##### **4.2. Problem analysis**

The main focus of this case is whether the people's Government of Sipai Hezhe Township, Raohe County, Heilongjiang Province, is qualified as a plaintiff and whether the lawsuit against the three defendants meets the legal requirements. In this case, the court of first instance determined that the township government could file a lawsuit as the plaintiff. The court of second instance synthesized the opinions of the plaintiff and the defendant and consulted relevant experts to determine its plaintiff qualification. In this case, it can be seen that in order to safeguard the cultural rights and interests of Hezhe nationality, the township government filed a lawsuit as the plaintiff. The law does not specify whether it can become an appropriate plaintiff in the lawsuit. As a typical case of folk literature and art works, the case has a great impact and aroused extensive discussion. This case has brought us a lot of thinking. The Hezhen township government won the final victory and protected the precious culture and art of Hezhen tradition, but the court's judgment did not comply with laws and regulations, which brought great controversy to people. At present, China's judgments in the field of intellectual property rights mainly come from the copyright law and its relevant provisions. In this way, the court has no direct basis for sentencing in the process of dealing with the problem, which blurs the concept. In the specific judgment process, we still refer to the copyright law and its relevant judicial interpretation, which brings trouble to the treatment of relevant problems in the future<sup>[4]</sup>. The copyright of the folk literary work Wusuli boat song belongs to the Hezhe nationality. However, the Hezhe nationality is not only distributed in this place, but also has a series of problems, such as whether the township

government is fully representative, and who gets the income after the judgment. Finally, the Wusuli boat song case is of great significance as an introduction to representative relevant laws and regulations.

## **5. Problems in copyright protection of folk culture and art works**

### ***5.1. Imperfect legal protection system***

Lack of specific laws and regulations to protect, many works copyright disputes cannot be resolved, resulting in conflicts of interest, constitute infringement, works have been adapted or abused, and the phenomenon of tampering and distortion is increasing day by day. The copyright law cannot effectively protect folk literature and art works. First of all, it is difficult for folk literature and art works to determine which is the subject of rights, and cannot meet the requirements of copyright law for the originality of works. Secondly, the works have a long history. The term of protection stipulated in the copyright law is 50 years after the completion and death of the work, which has the nature of protecting private rights, while folk literature and art works involve public interests and do not belong to a person or organization. It is usually to protect the works of adaptation or secondary creation. Legal protection has limitations and is difficult to operate. At present, the lack of law and the backwardness of legislation do not adapt to the rapid development of Chinese culture. For the existing problems, we should improve the relevant legislation and promote the sustainable development of folk literature and art works.

### ***5.2. Reasonable use and restrictions are not specific***

The reasonable use of copyright does not need to pay any fees, which is conducive to promoting the dissemination and development of culture. At the same time, the cultural works created by other countries belong to their own countries, which can also drive the development of their own science and culture. However, when other countries use or adapt China's folk literature and art works without permission, which infringes on China's cultural resources, especially when other countries use China's culture to obtain more benefits, it is intolerable, which helps to protect China's culture from infringement, maintain the characteristics of our national culture, improve cultural self-confidence and inherit traditional culture, Unite as one. Therefore, I think other countries should be required to make reasonable use and make some restrictions.

### ***5.3. The effectiveness level of laws and regulations is low***

Nowadays, the protection of folk literature and art works in China is mainly based on local regulations. The scope of application and effectiveness of these Regulations are limited. The laws and regulations formulated in China are relatively scattered, most of them are formulated regulations, and there is no more effective law, so the crackdown on protection is not so strong. The regulations are not detailed and lack of specific and effective measures. Therefore, the formulation of a more effective law to regulate folk literature and art works will be more conducive to combating such violations.

### ***5.4. Lack of special rights protection system***

When the intellectual property rights of folk literature and art works are infringed, we should take the correct way to protect their rights timely and effectively. However, from a practical point of view, the protection of folklore rights is not sufficient and difficult, and there is no special department to deal with it, which restricts the protection of folklore works. In addition to the imperfections of laws and regulations and the settlement of specific disputes, there are no corresponding administrative supporting measures. From the dispute cases of most folk literary works, ordinary people lack legal literacy and protection consciousness. In addition, the channels for safeguarding rights are not unblocked, and the other party generally has a lot of resources and inequality, which makes it difficult to deal with disputes. It can only be solved in the end, which seriously infringes on the interests of the subject of rights and does not meet the requirements of social fairness and justice and the construction of a country ruled by law. Therefore, in addition to formulating corresponding laws and regulations, corresponding administrative mediation measures are also needed. Administrative measures have the characteristics of convenience and low cost, which is of great significance to the improvement of corresponding fields.

## **6. Suggestions on copyright protection of folk culture and art works**

### ***6.1. Clarify the scope of rights of copyright protection of folk cultural and artistic works***

People within the group do not need to obtain consent or pay remuneration, while people outside the group need to obtain consent to use adapted folk literature and art works, and classify the groups in order to clarify their rights and obligations. It is obvious that there is a lack of corresponding provisions in legislation, making it impossible to deal with infringement disputes. In addition, the specific subject of rights must be clarified. The law can specify the scope of the group and the internal and external aspects of the group, or the court can be required to find out in specific cases. The definition of the scope of groups is mainly that groups are different from natural persons, legal persons and other organizations. Natural persons, legal persons and other organizations are distinguished by different personnel, while specific groups and ethnic groups are not easy to identify<sup>[5]</sup>. It is difficult to distinguish them as subjects. It is not easy to distinguish rights and obligations, which is not conducive to the settlement of disputes. In addition, clarifying the subject of rights can maximize the interests and let the creators enjoy the interests. It can also improve the enthusiasm of creation, promote the protection of folk literature and art works, prevent the abuse of rights, promote innovation and creation, and promote cultural inheritance.

### ***6.2. Regulation of fair use system***

The draft stipulates restrictions and exceptions in Article 14, which basically continues the relevant provisions of the copyright law, mainly involving the use of learning and scientific research, news, museums and other situations. It can also be used without the permission of the copyright owner, which is basically limited to the non-profit nature. In terms of use and licensing, if both license and payment are required, it will hinder innovation and development, increase costs, reduce the use of folk literature and art works, and is not conducive to inheritance and protection. Although there are exceptions to the use of folk literature and art works, there are no restrictions on the use of foreign organizations and individuals, which will lead to the abuse of China's folk literature and art works by foreign countries, especially European and American developed countries, and obtain a lot of benefits, which is not conducive to the protection and development of China's traditional culture. The great development and prosperity of China's culture and the abuse of China's folk literature and art works by foreign countries threaten China's cultural security. Excluding foreign subjects from illegal use is conducive to maintaining the characteristics and advantages of China's culture, improving China's international voice in the field of culture, and improving national pride and self-confidence. In addition, in order to avoid the loss of China's excellent traditional culture overseas and being used and abused by European and American developed countries, no matter how foreign subjects use and adapt China's traditional cultural works, they should obtain consent and pay corresponding fees. In this regard, we can refer to the legislation of South Africa, and domestic rights subjects can use them reasonably within the scope specified by the law, Foreign subjects are directly prohibited from using cultural works of that country.

### ***6.3. Special legislative protection of the copyright of folk literature and art works***

Constantly innovate and enrich in the development of the times, and further stimulate the internal cultural value. Folk literature and art works have two characteristics of spirit and material, so legislation should pay attention to the protection of spiritual culture and material rights, and coordinate the relationship between them, so that material and spirit can better promote the development of folk literature and art works. In addition, folk literature and art works come from the people and are produced and developed in the process of long-term production and life. In legislation, we should coordinate the interests of groups and individuals, improve the source of income and create greater social value. Finally, in the use of folk literature and art, effectively organize the future to pursue greater interests, pursue exaggeration, attract eye attention, tamper and distort the image, which also needs to be restricted and balanced by law.

### ***6.4. Establish a mediation mechanism for disputes over folk literature and art works***

In order to ensure the healthy and orderly development of folk literary and artistic works, government departments may set up special management departments, such as the Dispute Mediation Office of folk literary and artistic works. Disputes over folk literary and artistic works may be subject to administrative mediation in accordance with existing laws and regulations. At the same time, we will

standardize the management and support of folk literary and artistic works within the jurisdiction. In terms of establishing dispute mediation institutions, experts and scholars from folk literary and art circles and legal circles can be attracted to join. When dealing with specific affairs, standardized procedures can be stipulated, such as dispute application; Expert demonstration; Holding hearings; Standardized treatment can improve the effectiveness of dispute resolution, save administrative costs and provide credibility. However, if the relevant subject of the copyright dispute over folk literature and art works cannot be determined and cannot be mediated according to the current laws and regulations, the parties shall be informed to bring a lawsuit to the court and deal with the relevant disputes according to law.

## 7. Conclusions

China has rich historical and cultural heritage. Folk culture and art works are an important part of excellent traditional culture. Although traditional culture is abstract and complex, it can be presented through vivid and interesting works of art in various forms. It is conducive to enhancing national cohesion and the protection and inheritance of excellent traditional culture. Therefore, in the process of protecting folk literature and art works, we should improve relevant legislation, clarify the scope of the subject of rights, formulate a reasonable use system according to the actual situation, solve the infringement problem in practice, and ensure the prosperity and development of folk literature and art works.

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