

Research on the Intellectual Property Protection of Fan Works

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Abstract: Tongren creation is a new form of literary creation, which refers to the author's absorption of elements such as character images and plot settings on the basis of the original work, injecting their own inspiration into it, and then creating a new work through secondary creation. With the vigorous development of the Internet, there are more and more domestic peer fans, and the literary and economic value of peer works is also increasingly apparent. However, due to the use of some elements of the original work in fan works, there is inevitably a certain relationship with the original work, which is one of the important reasons why fan works are prone to disputes with the original work. From the existing laws and regulations in our country, it can be seen that there is no clear provision in our country's copyright law to regulate, constrain, and protect fan works. It is precisely the lack of laws on fan works in our country that makes it almost impossible for them to receive legal protection. In this context, this article starts with the copyright protection of fan works, and based on discussing the relevant theories of fan works, explores the positive values that should be protected. Then, by sorting out cases involving the copyright of fan works, starting from the actual protection of fan works copyright, the existing problems and shortcomings are summarized and summarized. Finally, based on the current legislative situation in our country and combined with the actual situation, corresponding suggestions are proposed to solve the problems in the process of protecting the copyright of fan works, so that fan works can play their due social and cultural value in society.

Keywords: fan works, original works, secondary creations, copyright protection

1. Introduction

1.1. The concept of fan works

The academic concept of fan works originated in Japan and European and American countries, meaning "non commercial, not influenced by commerce, not for profit, not published on commercial platforms, the product of individual or group re creation activities based on the original work or prototype." In China, some scholars have proposed that fan works are works that use certain elements or overall macro settings from existing works, including character names, personality traits, historical backgrounds, and related character settings, for secondary creation; Another group of scholars believe that fan works are works that transform characters from classic games, novels, or well-known comics based on their original works. At present, fan fiction works are mostly classified as literary works, and theoretically, there is no legal concept, nor is there a direct provision in copyright law to elaborate on them. As a relatively novel literary form, fan fiction works have many controversies in the field of intellectual property^[1].

According to different classification criteria, fan works can be divided into two categories: the first category, based on the degree of borrowing and use of elements contained in the original work, can be divided into deductive fan works and non deductive fan works; The second type can be divided into fan fiction, fan comics, fan dramas, etc. based on the different carriers and forms of expression of the original work. The meaning of fan works varies due to the different focuses of scholars on fan works, but when it comes to defining the concept or nature of fan works, scholars unanimously believe that fan works have both originality and retain some elements of the original work. The vigorous development of social Internet big data in China has not only promoted cultural exchanges and social development, but also updated the concept of peer work. The author believes that fan fiction is a creative intellectual achievement produced by fan fiction authors, for some reason, based on the original work, using elements such as character names, historical backgrounds, and character characteristics from the original work,

and incorporating new ideas and expressions from the fan fiction author.

1.2. Characteristics of fan works

Firstly, fan works have dependency. According to the concept of fan fiction, fan fiction is based on the original work and is created on the basis of the original work, such as the historical background, character names, and plot design of the original work. In the process of fan fiction's secondary creation of the original work, it is more or less related to the original work, and some elements of the original work may be used. Without the original work, fan fiction would not have been created. It can be seen that fan works are dependent on the original work^[2].

Secondly, fan works have a certain degree of originality. A fan work is not a direct reproduction of the original work or a combination of the original content. Although fan works draw on some elements from the original work, fan authors still re create the original work based on their own thinking, creating new skeletons and flesh in the fan work, and ultimately forming an original fan work. Therefore, fan works have their own soul, can showcase the personal characteristics of fan authors, and possess originality^[3].

Thirdly, the creation of fan works has universality. With the development of society and the continuous improvement of national cultural level, fan works with mass characteristics have emerged one after another. As far as the creative subject is concerned, due to the non-commercial nature of fan works, this means that authors can express their ideas and creative intentions more freely. Most of the creators of fan works are fans and enthusiasts of the original work, and they have a deep emotional and understanding of the original work, so they are more able to create fan works that conform to the original style but have innovative content. From the perspective of publishing platforms, previously there were only organizations approved and recognized by the government, such as publishing houses, film studios, film and television production companies, etc. Now, with the development of the Internet, peer works can exist in many forms, not just restricted to formal publication or publication. Short video platforms, microblogs, etc. provide media for their publication, so the creation of peer works is very common now.

2. An analysis of the legitimacy of copyright protection for fan works

2.1. The protection of fan works is in line with the legislative purpose of copyright

The Copyright Law clearly states at the beginning that its legislative purpose is to provide dual protection. On the one hand, it must firmly protect the legitimate rights and interests of copyright owners and ensure that the creative results of their works are respected and rewarded as they deserve; On the other hand, it is also necessary to create a favorable creative environment, actively encourage authors to innovate, and promote the vigorous development of China's cultural industry. In other words, the legislative orientation of copyright law contains the protection of various rights subjects by legislators, which not only protects the rights of authors but also safeguards the development of China's cultural industry. The goal is to seek a balance of interests, rather than just protecting the copyright of authors. Legislators focus on seeking a balance between reasonable protection of the copyright of original authors and appropriate restrictions on creators of fan works, in order to promote the flourishing of the cultural field. In the vast development of disciplines, whether in the fields of science and technology or literature and art, there are deeply imprinted footprints of reference and innovation, constantly developing and improving on the shoulders of giants. With a new creative approach, fan creation has achieved innovation in the field of literature. Tongren works, with their innovative creative methods, will promote the continuous prosperity and development of literature and art. Tongren authors express their opinions through secondary creation, resulting in a unique output that is different from the original work. At the same time, they also continue the story of the original work, allowing for the widespread dissemination of diverse cultures; The widespread dissemination of fan works in turn promotes the further expansion of the influence of the original works. With the spread of fan fiction and the recognition of fan fiction, more and more readers will develop a greater interest in the original work and choose to continue reading it. This behavior also strengthens the influence of the original work and strengthens the connection between the original work and fan fiction. The combined effect of these two factors has promoted the flourishing development of the cultural industry^[4].

Copyright law focuses more on protecting works with significant copyright value, ensuring that these works can enjoy unique rights under the protection of the law, thereby serving creative value, promoting the willingness of authors to create, and safeguarding the products of various intellectual activities.

Scholar You Deng once proposed the theory of "egalitarianism", believing that copyright and expression rights have no distinction of high or low status, and both should be equally protected by the law^[5]. It is recognized that fan works should be protected to a considerable extent by the original work under copyright law. By confirming the legal status of fan works through the Copyright Law, it can not only stimulate the enthusiasm of authors when creating, promote the prosperity of cultural creation, but also facilitate the continuous emergence and inheritance of excellent cultural and creative works. Encouraging creative expression is a high-quality soil for cultivating cultural innovation, meeting the public domain needs of fellow creators, enabling them to develop under creative freedom, and achieving the goal of cultural prosperity and progress. The legal protection of fellow works cannot be ignored^[6].

2.2. The necessity of protecting fan works

Firstly, protecting fan works is beneficial for promoting the dissemination of original works. The relationship between fan works and original works is complementary, and the audience of fan works does not conflict with the original works. Protect fan works and enable them to be widely disseminated in a legal and compliant manner. Excellent fan works can promote an increase in the audience of the original work, resulting in more reading and browsing volume, and further expanding the influence of the original work.

Secondly, fan works are conducive to promoting cultural diversity. The form of fan creation provides readers, fans, and fans with more opportunities to express their opinions and emotions, and enhances the freedom and enthusiasm of the public to participate in cultural life. In addition, in the information age, the development of online literature websites and self media platforms has provided convenient platforms for the public who are willing to create original works for the second time. Moreover, the posting threshold set by these platforms is not high, and most of them can be published after formal review. Therefore, the public can widely participate in the creation of fan works, and this convenient and low entry threshold cultural creation form will become a significant driving force for promoting cultural diversity^[7].

Once again, fan works can create new economic value for the original author and surrounding industries. There are two main reasons for this: firstly, the development of excellent fan works can have a reverse effect on the original works, leading to an increase in their value. As mentioned earlier, readers who are interested in fan works tend to approach the original work with a love for the house and a desire for love. The dissemination of fan works will also enhance readers' interest in the original work, and it is also a free and effective form of promotion for the original work. The second reason is that fan works themselves have economic value, and there are two main ways to monetize them: first, some platforms set up certain chapters for payment in order to read, which allows fan creators to gain economic benefits. Secondly, in daily life, it is not difficult to find that readers are also very fond of the character images appearing in their favorite fan works. Therefore, a more common way to benefit from it is to sell fan peripheral products. The co branded derivative products of fan works character images and peripheral collection products can bring great economic value.

3. Typical case analysis of copyright protection for fan works

3.1. Introduction to the Case of a Company in Beijing v. XX Company

In March 2008, author Jiang reached an important agreement with a company in Beijing to exclusively grant the electronic copyright and information network dissemination rights of his work "Flower X Bone" to the company. Since its publication, "Flower X Bone" has received enthusiastic attention and love from a large number of readers. However, the plaintiff provided evidence that on the "Feilu Novel Network" platform operated by the defendant XX company, users could find over a hundred corresponding links related to it by searching for the keyword "Flower X Bone". These associated links can access novel works with the words "Flower X Bone" in the title. It is understood that "Fei Lu Novel Network" has previously held a fan fiction competition for profit. Although existing evidence cannot directly prove that the works in these hundreds of links are all entries in the competition, the plaintiff found that these works have a high similarity with "Flower X Bone". Therefore, the plaintiff, a certain company in Beijing, believes that XX company's behavior constitutes unfair competition, and therefore files a lawsuit against XX company, the operator of Feilu Novel Network, with the court on this basis.

3.2. Analysis of Disputes in Cases

The focus of controversy in this case lies in whether the over a hundred novels displayed on the defendant's novel website with the title "Flower X Bone" or containing relevant words have infringed upon the legitimate rights and interests of the plaintiff's work "Flower X Bone", thereby constituting unfair competition. The plaintiff, a company in Beijing, believes that "Flower X Bone", as a well-known work, has received millions of clicks on non VIP chapters for online reading, and the TV series adaptation of the novel with the same name has also been a great success. The plaintiff further argues that the name of the work, the names of the main characters, and the unique weapons and props of "Flower X Bone" all belong to the unique identification of the work, and have significant recognition and commercial value. The plaintiff believes that the defendant XX company's publication of fan works related to "Flower X Bone" on its website actually utilized the popularity and distinctive elements of the plaintiff's works, thus constituting an unfair competition behavior.

3.3. Case judgment result

The court found that XX company engaged in unfair competition against a company in Beijing for publishing a large number of novels containing the words "Flower X Bone" on the Feilu Novel website. Both parties are engaged in the business of online literary works and have a direct competitive relationship. As a contracted work of a company in Beijing, "Flower X Bone" has a unique and well-known name, and should be regarded as a unique product name. Among them, 9 A-level signed works were unfair competition behaviors jointly implemented by both parties, while the remaining 98 did not directly benefit, but XX company failed to fulfill its review obligations and allowed "riding the heat" behavior, constituting indirect infringement. The court believes that the defendant XX company needs to eliminate the impact and compensate for the losses, and the amount of compensation will be determined comprehensively based on factors such as the degree of fault of XX company and the popularity of the work.

3.4. Analysis and Reflection on Cases

In recent years, with the popularity of fan culture, the issue of copyright infringement in fan works has gradually become a focus of public and legal attention. Through the trial of relevant cases, it can be seen that the court's attitude towards handling disputes over fan works and their copyrights. Courts usually believe that only creative expressions can be protected by copyright law, that is, there should be a significant difference between new and original works, which should be identifiable by the general public without the need for professional skills or judgment. However, this standard seems to be relatively vague in practical operation, mainly relying on the personal judgment of judges and lacking clear objectivity, which has sparked widespread discussion and questioning in society.

With the flourishing development of fan culture, the issue of copyright protection for fan works is becoming increasingly prominent. Currently, there is still a vague area of legal protection for the copyright of fan works, leading to many controversies in practice. The main issues include: whether fan works can receive protection under copyright law, whether they infringe upon the copyright of the original work, and whether the development of fan works constitutes unfair competition with the original work.

When dealing with these issues, the judgment is mainly based on the originality of the fan work, the substantial similarity with the original work, and whether it harms the actual interests of the original work. However, due to the lack of clear legal guidelines, judges often rely on personal experience and discretion when making decisions. This leads to a lower actual filing rate for copyright infringement cases involving fan works.

Despite the increasing popularity of fan culture, there are already a large number of fan works in China. However, only over 200 relevant judicial documents can be found online, most of which are appeal cases. This indicates that many authors have not actively defended their rights when facing infringement or infringement of their works by their peers, or have chosen to seek remedies through anti unfair competition laws rather than copyright laws. This trend reflects the shortcomings of copyright protection for fan works in legal practice, and is worth further research and exploration.

4. Suggestions for improving the protection of copyright in fan works

4.1. Clarify the positioning of fan works

In order to better protect fan works and regulate fan creations, it is first necessary to ensure their legal recognition and adjustment, and clarify their legal status under copyright law. As a product of communication among like-minded individuals, fan works are mostly derivative works with originality based on original works or prototypes such as novels, movies, and anime, using original elements such as background, characters, plot, and terminology as the basis for secondary creation. However, there is a lack of specific implementation rules on how to determine the originality standard, and currently, the legal status of fan works in China's Copyright Law is also relatively vague. It is not appropriate to use cover all clauses to protect fan works. Therefore, it is necessary to clarify the definition, nature, and originality standards of fan works in China's Copyright Law as soon as possible, and include them in the scope of copyright objects, giving them the legal status they deserve. Secondly, different restrictive protection measures should be taken for different types of fan works, and appropriate compensation mechanisms should be established: non deductive fan works that use fewer elements of the original work and have a higher degree of originality should be recognized as independent original works for protection. When not for commercial use, there is no need to obtain authorization from the original author, but the original author should be signed; When conducting commercial activities, the corresponding remuneration should be paid to the original author based on the actual contribution rate of the borrowed original elements and the economic value created by the collaborator's work^[8].

Deductive fan works use a lot of the central elements of the original work and have a strong dependence on the original work. They can be protected by referring to "deductive works". When creating a second work, it is necessary to obtain the consent of the original author in accordance with the provisions of the Copyright Law.

4.2. Standardize the creation of fan works

Enhancing copyright awareness is not only a reflection of the author's own awareness of protecting their own rights, but also a respect for the copyright of others. In order to promote the rational and orderly development of fan works by enhancing their copyright awareness, we can start by paying attention to the rights and obligations of fan authors. One is at the level of protecting the rights of co creators: co authors should receive corresponding legal status and protection based on the works created by the original author, which is fundamentally distinguished from the concept of infringing products such as plagiarism and plagiarism. As a fan creator, one should also enhance their awareness of the legality of the fan works they create. For example, their fan works can indicate the nature of their fan creations at the beginning of creation. If the work is infringed upon during publication and dissemination, they can use legal means in a timely and reasonable manner to actively protect their rights, instead of adopting a passive attitude of turning a blind eye or being helpless towards infringement.; The second aspect is the obligation of co creators: first, co creators should have an understanding of the relevant copyright knowledge of co created works and possess corresponding legal knowledge of copyright before engaging in co creation. On the basis of understanding the basic knowledge, create fan works that meet the requirements, and the created fan works should conform to the values of goodness. Secondly, the copyright rights of the original copyright owner must not be ignored. The creation of works by co authors should be based on fully respecting the rights of the original copyright owner. Before co authors want to engage in secondary creation, they should obtain authorization from the original author in advance. Finally, the content and image of co author works should be careful not to maliciously distort the works created by the original author, thereby damaging the image of the works created by the original author and tarnishing their reputation. The profits obtained by co authors based on the work created by the original author should also be promptly paid to the original author in accordance with the Copyright Law.^[9]

5. Conclusion

Spiritual civilization is a high-level pursuit that emerged on the basis of material abundance. In recent years, with the rapid development of China's economy and the gradual improvement of material living standards, the public has a higher pursuit of spiritual life. The emergence and dissemination of fan works is a manifestation of people's pursuit of spiritual enjoyment. On the one hand, with the rapid development of online literature platforms, fan culture has a broad market. On the other hand, the special creative

method of borrowing elements from original works in fan works has also led to the emergence of disputes and infringement. Due to the current unclear situation in China regarding the regulation and protection of fan works, it is necessary to establish relevant legal systems as soon as possible and introduce guiding cases to ensure that fan works can thrive and develop in a relatively stable environment. Since ancient times, Chinese culture has adhered to the concept of inclusiveness and drawing on the strengths of others, encouraging multiple forms of literary creation. It is hoped that China can establish a relatively complete regulatory mechanism for the fan creation industry in the near future, play the important role of excellent fan works in enriching the spiritual life of the masses, and bring new economic benefits to cultural creation and related industries, thereby promoting the flourishing and development of China's cultural industry.

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