

# Research on Neighboring Rights in Copyright Protection

## —Taking Acrobatic Art as an Empirical Object

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**Abstract**—Acrobatic works of art are different from works in the fields of literature, art and science, which makes the protection scope of copyright law quite limited and directly leads to the lack of legislative meaning of “acrobatic works of art”. Therefore, it is of great significance to explore the rationality of the provisions of “acrobatic works of art”. China can learn from the practices of most civil law countries: on the one hand, improve the protection level of neighboring rights; On the other hand, the definition of “performer” is expanded to protect the rights of copyright owners with the rights of performers.

**Keywords**—copyright law; acrobatic art; neighboring rights; performer rights

### I. INTRODUCTION

As early as 2011 when the Copyright Law was amended in China, acrobatic works of art including magic were included in the scope of protection for the first time, and the subsequently revised Regulations on the Implementation of Copyright clearly stated: “Acrobatic art works refer to acrobatics, magic, Circus and other works expressed through physical movements and techniques.” By examining the elements of the “work” in the Copyright Law and the types of works listed in it, it is not difficult to find that acrobatic art works are different from other works in the field of literature, art, and science works. There are loopholes in the protection of acrobatic art legislation in China, making its scope of protection of acrobatic art works limited and the interests of relevant rights holders unable to be completely protected. Does “acrobatic art” constitute a “work”? Can “acrobatic art” exist “independently”? Both deserve further study [1].

### II. CHARACTERIZATION OF “ACROBATIC ART WORKS”

#### A. Confirmation of “Work” of Acrobatic Art Works

Compared with performances such as dance and theater, acrobatics, magic, and circus are a special art form. Acrobatic refers to the human skills performed by various props in a specific environment, with difficult and thrilling skills as the main means of expression. After the 2001 Copyright Law was amended, “Acrobatic Art Works” became one of the categories of works. Since then, Article 4 of the “Implementation Regulations on Copyright” defines the meaning of “acrobatic

art work”, that is, “a work expressed through physical movements and techniques.” Acrobatic art works are explicitly included in the scope of works regulated by the copyright law, so They deserve the characteristics of the general object protected by copyright [2].

First, confirmation of the results of mental labor. At this point, there is almost no controversy in the academic world, and most acrobatic art works are considered to be intellectual achievements, such as self-created movements and elaborate arrangements in acrobatics, and magical visual effects brought by magicians through their own creativity. Second, originality confirmation. The specific decomposition of “originality” is actually two requirements of “independence” and “creation”, that is, the work needs to be original. “Independence” refers to independent creation, everything originates from itself, and needs nothing out of nothing; if it is done on the basis of other people’s works, there needs to be significant differences. “Creation” does not require the height of literature or aesthetic value, but refers to the activity of creating space with intelligence. Third, the confirmation of reproducibility is also one of the most controversial elements in academic circles. Article 10 of China’s “Copyright Law” provides for the right of reproduction, which contains two meanings: one is that the work can be copied; the other is that the work must be copied in a “tangible” form, that is, people must make their thoughts tangible. This kind of vector is expressed and made known to others. Returning to the “works” of acrobatic art: acrobatics, circus, etc. often convey the connotation of the program through the actions of animals and performers. Even if the audience watches or records the whole process, they cannot reproduce their works, even with the performers themselves. Unable to complete the exact same performance as before. Let’s change the angle to analyze the reproducibility of magic. When a magician creates a magic “work”, there may be movement, music and even text design, but the mystery of magic lies in this. It is impossible for magicians to make these “secrets” public, which makes magic largely uninformable and unrepeatable, let alone the public dissemination and use of it [3].

According to the “automatic protection principle” of copyright in China and the academic saying “no communication is no right”, it can be seen that although

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acrobatics, magic, circus and other acrobatic arts meet the requirements of intellectual achievements and originality, they do not have replicability, that is, It complies with the relevant provisions of the "Copyright Law" of China on the constituent elements of "work", cannot be a work, and protects "acrobatic art" as a "work". There is an obvious lack of legislation.

### B. Analysis of "Independence" of Acrobatic Art

Techniques are not the subject of copyright law protection. The latest amendment of the Copyright Law further defines and improves the meaning of "acrobatic art works". Compared with China's current Copyright Law, it is found that the new amendment adds a "funny" item and deletes "Trick". This shows that legislators have realized the inadequacies of the word "trick", but have not yet been able to actually prevent scholars from questioning and arguing about this definition. The expression of a work is protected by copyright law, but the ideas or themes contained in the work are excluded from protection. Article 5 of China's "Copyright Law" lists "formulas" as objects that are not covered by this law, while acrobatics and circus are often conveyed through more difficult action formulas or skill training. The essence of "unspeakable secrets" in magic It is also a trick formula. Therefore, skills, as a method of operation, are not covered by copyright [4].

Apart from techniques, there are many things that cannot be independent in acrobatic art works. First, performance venues for acrobatic works of art are not protected by copyright. Take the circus classic show "Lion Drilling Fire Circle", where the show is performed is not subject to copyright law. On the one hand, the "Lion Drilling Fire Circle" program organized by Circus A at the venue cannot constitute B The reason why the circus cannot perform again at the venue; on the other hand, for the circus itself, they can still change venues to continue performing the same show. Second, performance is not protected by copyright. In acrobatics and circus, the common content expressed through body or movement is similar to dance. The common techniques and techniques used in magic are similar to traditional Chinese conjure, so it cannot be stated that a certain person has used it in acrobatic performance (Such as spins, flips, etc.), no longer allowed by a second person.

## III. DIFFICULTIES IN THE PROTECTION OF ACROBATICS IN CHINA

Although China's "Copyright Law" provides for "acrobatic art works", due to the excessive reliance on acrobatic art for skills, it faces greater difficulties in judicial definition and protection than other art forms.

### A. Low Level of Protection of Neighboring Rights

The original meaning of the neighbouring right is the right next to the copyright, which is essentially the right of the disseminator of the work. Civil law countries, including China, created this concept for the original purpose, that is, to protect the labor results of the disseminators of works. With the development of science and technology, we will find that more and more labor achievements that meet the originality but do not meet the constituent elements of "work" appear in real life, but cannot be protected by copyright. In our country,

neighboring rights mainly refer to six rights including the rights of performers. In summary, the main subject of its protection is auxiliary personnel who help authors to disseminate works by means of performance, recording, and broadcasting. Some of them will invest a lot of money in it, and some will integrate their intellectual creation into their works, so that the original works will be presented to the public in another new form, with new ideas, so they have reasons to be protected by law [5].

At the same time, it is worthy of our attention that compared with many civil law countries, China's copyright law has a lower level of protection for performers and other neighboring rights holders, which is obviously not conducive to the full realization of their own interests. According to the general view of the civil law system that "the level of protection of intellectual achievements is compatible with the degree of creativity", China should appropriately increase the level of protection of neighboring rights and play an important role of the copyright system, so as to compensate for its actual protection to a certain extent Defects in acrobatic art.

### B. Limitations of Performer Definition

The author mentioned the right of adjacency in the former. In the common law countries, the concept of adjacency is hardly introduced into copyright law, and they never strictly distinguish the concept between the two. In the theory and practice of US copyright law, performance itself constitutes an original work. Japan's "Copyright Law" provides: "Performance refers to the performance of works through theatrical performances, dances, performances, singing, oral performances, recitations or other methods (including those who use similar acts but are not performance works, but have technical qualities)" "In France, which is also a civil law system, its" Intellectual Property Code "states:" Performing artists means people performing literary and artistic works or performing juggling, circus, puppet shows. "In contrast, China's" copyright The Law Implementation Regulations define a performer as too restrictive. If China's "Copyright Law" also expands the definition of "performer" by enumerated methods, it may have a better effect in protecting acrobatic art [6].

## IV. REFERENCE AND PERFECTION: THE WAY OUT FOR LEGAL PROTECTION OF ACROBATIC ART FORMS IN CHINA

### A. Legislative Perspective

Reference does not mean copying, but choosing the good one to follow. Copyright legislation in various countries and relevant international treaties have shown that "-Acrobatic, magic, circus and other acrobatic art forms do not constitute independent new works." In order to make acrobatic art better enrich and serve our cultural life, China can learn from most The practice of civil law countries improves the level of protection of neighboring rights. At the same time as deleting the "acrobatic art work" provisions in the Copyright Law, the definition of "performer" has been expanded to include acrobatic, circus and magic performers. Include them and protect their rights with performer rights.

On the other hand, “acrobatic art” can also be included in the ranks of intangible culture, so through amendments to the “Intangible Cultural Heritage Protection Law”, it can be directly included in the scope of protection, and the ownership of its intellectual property rights can be clarified. At the same time, it shall be protected by administrative law means, set clear scope of powers and responsibilities for local departments and cultural authorities at all levels, establish the relationship between the government and society, with experts, and acrobatic artists, and protect and encourage the continued acrobatic art forms. Healthy and independent development, striving to protect from multiple perspectives “seeking truth from facts and adapting to local conditions”, and seeking the market value of acrobatic art forms to promote its continued development [7].

### B. Other Means

Taking comprehensive consideration of the current form of the Internet, in order to realize copyright protection in the new media environment, rights holders must actively defend their rights. For acrobatic works recorded as video, the current network copyright protection of general video works can be divided into four levels:

1) *Daily piracy monitoring and offline rights protection.* At present, domestic network technology has been able to search and scan the entire Internet for massive video, and search for any pirated works, so that the right holder can timely detect the pirates on the network and actively monitor and send letters.

2) *Administrative complaints.* For infringing acts that are more vicious and difficult to be stopped by the right holder, the right holder can request the intervention, intervention, coordination, and even law enforcement of the administrative department to file a case to protect the legitimate rights and interests. At present, the National Copyright Administration, local copyright offices, and cultural enforcement teams can all be channels for complaints[8].

3) *Civil proceedings.* That is, the right holder filed a lawsuit with the people’s court, asking the infringer (usually an unauthorized video website) to provide a means to stop the infringement and civil compensation, and it is also one of the most commonly used rights protection methods of the copyright owner; Issues such as low awards and long litigation cycles.

4) *Criminal proceedings.* That is to say, for the extremely bad infringement, the victim makes a criminal report to the judicial organs, and strives for public authority to intervene and file a case for investigation. However, according to current judicial interpretations, the criminal filing standard for the crime of copyright infringement should be no less than 500 works.

In addition to the above means, the dissemination of acrobatic works can also be protected by technical means. For example, DRM technologies currently developed by Internet

companies, including encryption, authentication, and rights management, make it impossible for pirates to intercept digital content from the transmission of works. These technologies are relatively mature in Europe and the United States, and major domestic video companies are also developing and optimizing. In addition, we can also start with the rights consciousness of the copyright holders. On the one hand, they can raise their awareness of rights protection and encourage their creative enthusiasm; on the other hand, they can increase the social propaganda of special wealth such as “acrobatic art”; Organizations and relevant conventions issued by UNESCO, including “appropriate legal, technical, administrative and financial measures”, which can be specifically formulated through the protection list of acrobatic art forms, the establishment of acrobatic art protection institutions, and the cultivation of professional protection organizations and institutions, etc. [9].

### V. CONCLUSION

In general, the development of the acrobatic industry requires not only the exploration and innovation of acrobats, but also the enhancement of copyright awareness, respect for others’ copyright, effective protection of one’s own copyright, and continuous improvement of copyright trading level. The improvement and strengthening of legislation, society, technology and other aspects not only make the acrobatic art which enjoys international reputation in China get the effective protection of copyright law, but also make outstanding contributions to the improvement of China’s cultural soft power and international comprehensive influence. We should be full of confidence in the future of the acrobatic art form.

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