

## Copyright Protection on Handicrafts of Yunnan Minorities from the Perspective of Industrialization

Qingqing Xu<sup>1, a</sup>

<sup>1</sup>School of Law, Oxford College, Kunming University of Science and Technology Kunming, Yunnan Province, China

**Keywords:** Handicrafts Of Yunnan Minorities; Folk Literary And Artistic Works; Copyright.

**Abstract.** The development of Yunnan minority cultural industry starts from minority handicrafts. With the process of cultural industrialization, national arts and crafts with physical forms have become an indispensable part in cultural industry. It is of great significance to protect the intellectual property rights, especially the copyrights of minority handicrafts. But many problems lead by the special attributes of minority handicrafts still need to be tackled, such as unclear right subject, undefined scopes of objects, and the insufficient content of copyright. Thus, appropriate modes must be adopted in order to provide feasible copyright protection for handicrafts of Yunnan minorities.

### Introduction

Yunnan minority handicrafts are created based on the unique life styles and thinking methods of national minorities. They use diversified traditional techniques and material carriers like painting, wood carving, clay sculpture, pottery and clothes to convey their national wisdom and ways of life, as well as their believes, aesthetic appeal and spiritual pursuits. Arts and crafts of minorities are important carriers of national cultural heritage. In the private law system, the incentive mechanism of ownership should be established to encourage the transformation from minority arts and crafts to competitive products, in order to expand market shares and inherit traditional handicrafts. In the public law system, in addition to the support through financial, tax and inheritance methods, the government also needs to supervise and regulate the minority handicrafts industry, in order to prevent the cultural authenticity of minority handicrafts and national culture alienation. On the basis of above analysis, the author focuses on the copyright protection of national handicrafts in the private law system.

### Definition of Handicrafts of Yunnan Minorities

The definition of concept is the cornerstone of discussion. We need to clarify the concept and attributes of national arts and crafts firstly, and then define the relationship between national handicraft and the object of copyright, "works". Shi-lin Zhao from the Yunnan Minzu University makes detailed classification of Yunnan minority handicrafts in his book, Yunnan Minority Cultural Industry and Cultural Inheritance Mechanism. From the perspective of copyright, Yunnan arts and crafts of minorities can be defined as, tangible expressions of literature and art created by minority groups or individuals from groups in the territory of Yunnan province; these arts and crafts can reflect group expectations, emotions, beliefs, interests, and pass down from generation to generation. [1] The concept defines several properties of "national handicrafts".

**National arts and crafts are tangible knowledge.** The second article of Regulations on the Protection of Traditional Arts and Crafts stipulates that, "traditional arts and crafts refers to exquisite handicrafts and techniques with long histories, complete technical processes, distinctive national styles and local characteristics, as well as reputations at home and abroad." The definition requires traditional arts and crafts have tangible and intangible forms at the same time. Tangible form refers to the physical expressions of handicrafts; intangible form refers to intangible information like the art processing, related regional culture, historical tradition, philosophy and aesthetic connotation of folk culture. Categories of "handicrafts" should be listed in the legislative definition of national arts. The tangible expressions of handicrafts belong to object of copyright protection. The focus of discussion

should be how to determine and identify the "originality" of national handicrafts. Operating methods and production processes are patent issues, which could not be included in copyright discussion.

**National arts and crafts are handicrafts, not mechanical manufacturing artworks.** Machinery manufacturing refers to large-scale standardized machinery production. Manual production is largely replaced, or even completely rejected. For example, woodcarving from Jianchuan, Yunnan belongs to handicrafts, though original or modified lathes should be used in engraving and assembling of wood components. Machine only takes the supporting role in the production process. Unlike large-scale industrial reproduction encouraged by the copyright law, national handicrafts contain simple, sincere and ingenious wisdom of creation. Even in today's national cultural industry, the protection of minority handicrafts should balance public interests and demands, encourage creative production and the authenticity of minority handicrafts.

**There are differences and overlaps between national crafts, fine arts and practical works of art.** These differences are reflected not only in specific classifications, but in different directions of their interior expressions. Fine arts produce visual aesthetic through lines, colors and shapes; practical arts have both aesthetic values and practicability; in addition to aesthetic and practicability, national crafts also have specific styles, application experiences and nationality information.

### **Challenges in the Copyright Protection of Handicrafts of Yunnan Minorities**

Do the copyright motivation, protection and balance mechanisms have positive values for traditional knowledge and national handicrafts? This kind of question originates from the denial of existing legal system for intellectual property rights, and the discussion of feasibility of intellectual property systems for traditional knowledge and folk arts.

The reasons for opposing copyright protection for national handicrafts and traditional technology mainly focus on following aspects.

First, minority arts and crafts are created by ethnic groups. There are no specific subjects of copyright protection. Minority handicrafts are formed after the accumulation of several generations' experiences. In specific nationality areas, people need to update their living culture art resources continuously. The subjects of minority arts and crafts are majorities of people, rather than specific individuals. Thus, minority arts and crafts should be classified as "common knowledge". Everyone can use, communicate and exchange them for free. It is unnecessary of the state to set up obstacles in knowledge sharing.

Second, only the copyrights of works with originality should be protected. But in minority handicrafts, massive tangible expressions like decorations, patterns, colors and models pass down from generation to generation, and they do not have originality.

The third reason is the content of copyright. International copyright laws usually divide the protection of creative intelligence achievement into personal rights and property rights. Based on characteristics of minority handicrafts, the implementation of specific rights will be different from common works. Therefore, it is necessary to explore the specific rights of national handicraft products.

### **Analyses and Improvement of Copyright Protection Methods on Handicrafts of Yunnan Minorities**

**The subject of copyright of minority handicrafts: the concepts of "specific nationalities, minority groups or communities".** With the development of theory and practice, the scope of "right subject" has been extended from a single subject to multiple subjects. The uncertainty right subjects of national arts and crafts are no longer the focus of debate. Protection of Traditional Arts and Crafts (Exposure Draft) published in 2014 by the National Copyright Administration of the P.R.C. make provisions in the fifth article, right subjects of folk literature and art works are particular nations, minority groups or communities. The copyright of group owners have got legislation confirmation. But the implementation of related policies still needs specific operation details.

In the draft, three abstract concepts, "specific nationalities, minority groups or communities" are used. These three words have their own connotation and denotation. According to Professor Yong-hui Gong from Guangxi University for Nationalities, the definition of nationality goes as following. "A nationality is a stable community of people. It is formed in a certain historical stage. Generally speaking, people from the same nationality have common characteristics in historical origin, production mode, language, culture, custom and so on. Religion plays an important role in the formation and development of some nationalities". [2] "Modern nationality" is a cultural concept which not involves history, language, religion or geography. People from the same nationality may have different historical origins and different religious beliefs; people from different nationalities may share the language. "Minority groups" refer to the collections of nationalities that have close residences, languages, origins and cultures. [3] The concept of "community" is described in the scopes of sociology and geography. In a broad sense, it refers to the sum of all social relations that occur in specific areas. It includes both concrete social relations and abstract thought relations. Thus, we also need to define the concept of "specific". "Specific" means the birthplace of the work, or the place where people actually use, control and heritage the work? Natural changes and cultural communication lead to the dynamic mobility of folk literature and art works. Which place can enjoy the copyright protection, the birthplace of the work, or the place where people actually use, control and heritage the work?

The author believes that, the fifth article of the Protection of Traditional Arts and Crafts (Exposure Draft) should be amended as follows: the copyright for folk literature and art works belongs to their origin areas. Due to natural changes, cultural dissemination or other reasons, related works of folk literature and art may migrate from their birthplace. Under that situation, the minority groups who actually inherit, use and control these works can also enjoy the copyright. The problem of static attribution of copyright is alleviated; but specific subjects are still needed to promote the development and industrialization of folk literature and art. [4]

**The perfection of objects of minority handicrafts.** The second article of the Exposure Draft lists four kinds of folk literature and art works. Combined with the definition of minority handicrafts above, it falls into the fourth categories of "planar and three-dimensional forms of expression like folk painting, pattern, sculpture, design, construction, etc." Thus, art forms like pottery, porcelain, wood, lacquer, jewelry, weaving, embroidery, clothing and musical instruments, though are not listed in the draft, has already been included in the provision.

Another difficulty in judicial application is: how to define the derivative works of folk literature and art? According to the domestic and foreign legislative and judicial experienced, originality has been the basic requirement for copyright protection. So, if a new piece of work created on the basis of minority handicrafts has originality, we need to analyze and determine the work's property: new interpretation or infringement of the original handicraft. If it belongs to derivative works, it should follow the copyright protection rules for derivative works.

**The perfection in contents of minority handicraft copyrights.** The sixth article of the Exposure Draft defines contents of rights for folk literature: (1) show the identity; (2) prohibit distorting or tampering works of folk literature and art; (3) the ways of public communication include copying, distribution, performance and adaptation. There are two personal rights and five property rights.

Specific to personal identity rights, in addition to specific right subjects above, national arts and crafts also need to find a proper way to identify them. Some scholars put forward to certification and labeling systems for national arts and crafts. [5] The author provides a way to solve the dilemma of "showing identity" in reality, which can also prevent the distortion and tampering of national arts and crafts.

Specific to property rights, there are three shortcomings. Firstly, the exhibition right and shooting right for national arts and crafts are not included. Secondly, some neighboring rights, such as copyrights, rights of audio and video recording and broadcasting rights are not included. The author believes that, above property rights should be added to ensure the protection of national arts and crafts and promote the better communication, inheritance and development of national arts and crafts. Third,

the "right of public communication" should be changed to the rights of broadcasting and network dissemination, in order to comply with the existing legal system and form a complete system of rights.

The industrialization of handicrafts of Yunnan minorities, which means to develop minority handicrafts as commodities, needs to face the problem of large numbers of forged and fake works of art and craft. For instance, now in the market, a lot of Shilin Yi nationality handmade embroidery works are replaced by machinery embroidery works; the traditional isatis root dyeing in Zhoucheng, Dali has become chemical dyeing. In the tide of industrialization, arts and crafts of Yunnan minorities may lose their national identifications, or wither due to lack of market acceptance and poor logistics. Therefore, in the process of industrialization, copyright system cannot protect minority handicrafts. We need to comprehensively consider the features of these handicrafts, and from a system in which copyright, trademark right and patent right act as the main body, while anti-unfair competition law, intangible cultural heritage law, contract law, tort liability law and other laws and regulations play supportive roles. For example, we can use geographical indications and certification marks to prevent counterfeit and abuse; establish Yunnan ethnic minority crafts directory system and database; protect the appearance of ethnic handicrafts and corresponding techniques by applying for patents or business secrets; make agreements or contracts to promote the industrialization of ethnic handicrafts, regulate profit sharing rules, improve the management mechanism and rational use system, and guarantee rights and obligations of all parties.

### **Acknowledgement**

Fund Project: This paper is one of the outcomes of the research, Legal Research on the Minority Cultural Industry of Yunnan (2012c194), which is supported by Foundation for Projects of Education Department of Yunnan Province.

### **References**

- [1] S.L. Zhao, Study on cultural industry and cultural inheritance mechanism of Yunnan minority minorities, Yunnan Minority Publishing House, Kunming, 2010.
- [2] J.B. Tang, S.Q. Chen, Debate between nationalities and minority groups, J. Journal of Northwest University for Nationalities. 2 (2011).
- [3] X.X. Wang, Study on nomadic Uygur minority groups in the hinterland of Xinjiang desert, J. Minzu Tribune. 2 (2012).
- [4] Y.H. Yan, Y.Y. Ma, How to improve the copyright protection for folk literary and artistic works? China Intellectual Property News. 2014-12-19.
- [5] A.H. Chen, Y. Qin, Protection mechanism for arts and crafts of minority nationalities, J. Guizhou Minority Studies. 4 (2013).