

A Preliminary Study on the Copyright Issues of Fan Works

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Abstract: With the rapid development of the Internet, the fan works, which were only communicated among peers at first, began to appear in large numbers in the public's view. At present, there are more and more types of fan works, and even become a trend of artistic creation. There is no clear regulation in China's Copyright Law regarding the emerging form of fan works. Fan works are different from ordinary works in that they are created by borrowing elements such as characters or story backgrounds from the original work. Due to this special creative method, fan works have been misunderstood by the public as "problematic works". This article aims to establish the legal status of fan works, improve the relevant content of fan works copyright, promote the healthy development of culture, and assist the vigorous progress of China's cultural industry through in-depth research on the nature, characteristics, and protection of fan works.

Keywords: Fan Works; Derivative Works; Copyright; Legality

With the continuous development and progress of network technology, fan works have gone out of the Internet and entered the public's vision. At first, fan works were only exchanged and disseminated among a group of fan enthusiasts. Now, more and more fan works are loved by a large number of readers, and some excellent fan works have been published and distributed. Due to the lack of clear regulations on fan works in relevant laws in China, a series of litigation disputes have arisen regarding the relationship between fan works and original works. Among them, the most notable case is Jin Yong's lawsuit against Jiangnan's "*There They Were*", which also pushed the discussion of copyright issues in fan works to the peak.

At present, there is relatively little research on the copyright issue of fan works by domestic

scholars. The articles mainly involve the conflict of rights between fan works and the original work, the legality of using elements from the original work to create fan works, the protection of virtual images in works, and the discussion of the relationship between anti unfair competition law and copyright law through fan works. The author found that many scholars' research focuses mainly on whether fan works infringe and how to effectively regulate the creation and circulation of fan works. There is no detailed discussion on whether fan works have copyright, whether their copyright has legality, and whether fan works should be protected. Therefore, this study focuses on the nature and characteristics of fan works, deeply analyzing whether fan works have copyright and the legitimacy of copyright, and proposing suggestions on how to protect fan works copyright.

1.The Nature of Fan Works Under Copyright Law

1.1 The Concept of Fan Works

Fan fiction is an emerging term, but it is not a newly generated thing. The term 'douren' can be traced back to ancient China and first appeared in the Thirteen Trigrams of the Book of Changes, which read: 'Tongren is in the wild, prosperous, and prosperous, crossing the great rivers'. The explanation of doujin in Cihai is: "In the past, people with similar interests or who worked together were called doujin, also known as 'tongren ". The modern concept of the term "doujin" is derived from the Japanese term ACG Culture, the expression in Japanese is "doujin", which means people who share the same interests and thoughts. The term 'fan works' was also introduced to China through Japan, referring to re created works based on existing original works by fans and enthusiasts. The academic concept of fan fiction was first proposed by Professor Rebecca Tushnet from the United States in 1997, who believed that fan fiction is a literary work created by non

professional creators based on recognizable and individually usable popular culture or elements, such as television programs. Currently, the concept of fan fiction has not yet formed a unified view in China's academic and practical circles, but the widely recognized definition is the re-creation activity and its products carried out by fan enthusiasts based on the original work or prototype.

1.2 Characteristics of Fan Works

With the development of Internet technology, there have been some new changes in fan works creation, which constantly challenge the copyright of the original author. Overall, current fan works mainly have the following characteristics.

1.2.1 Fan works have reliance

The creation of fan works is based on the original work, and fan works belong to conscious intertextuality. The elements and proportions used in fan works also vary, so different fan works rely on the original work differently. Representative works include "*The Legend of Wukong*" and "*The Harry Potter Dictionary*". "*The Legend of Wukong*" is a fan work of the classic novel "*Journey to the West*". It relies on the characters of Sun Wukong and others in "*Journey to the West*", but the story is set in a time when Sun Wukong had not yet become the Monkey King. It tells the story of Sun Wukong's disobedience to the will of heaven and earth, and his rebellion against the gods of heaven and earth. This is completely different from the original "*Journey to the West*" story of Tang Monk and his three disciples going to the West to obtain Buddhist scriptures, overcoming various demons and monsters, and finally achieving true enlightenment and enlightenment. The *Harry Potter Dictionary*, on the other hand, is entirely based on the characters, plot, and other elements of J.K. Rowling's *Harry Potter* series. It is an encyclopedia about the Harry Potter series of novels, detailing various materials related to this magical world, covering magical terms, items, schools, characters, and other aspects of *Harry Potter*. Therefore, regardless of the proportion of elements in the original work that fan works rely on or what elements in the original work they rely on, there is always a dependency relationship with the original work.

1.2.2 Fan works have originality

Originality, as a substantive requirement for works to obtain protection under copyright law, is an indispensable core element. The definition of originality by the World Intellectual Property Organization is that "a work belongs to the author's own creation and is not at all or substantially copied from another work." The requirements for originality in China's copyright law are basically consistent with the World Intellectual Property Organization's view, that is, a work is independently created by the author and has intellectual creativity. The views of countries on originality are basically the same, but there has always been controversy over the definition of originality. Common law countries adhere to the concept of "private property" supremacy, that is, "property values", and the protection mechanism for works is based on the protection of personal property. The mainland legal system places greater emphasis on non-material personality values, believing that "works are extensions of personality and the culmination of ideas,..." Therefore, the expression of the author's "personality" is a reflection of the originality of the work.

Fan works are works created by fan authors based on elements such as character images, plot, background, theme, and style from the original work, using expressions or content settings that are significantly different from the original work. Although fan works use some elements from the original work, the expression methods of fan authors are not the same, and the creative content produced is also different from the original work, which is fundamentally different from the product of plagiarism. For example, the fan work "*The Legend of Wukong*" is a new work created using characters from "*Journey to the West*". Judge Storey believed that "in an abstract sense, there is almost nothing truly new and original in truth, literature, science, and art. All literary and artistic works, as well as scientific achievements, must borrow and use the creative achievements of predecessors." Therefore, the creation of fan works cannot be denied just because certain elements from the original work are used. This view is obviously too one-sided. Fan authors complete the external expression of their inner thoughts through independent creation of fan works, which contains the originality defined by

copyright law.

1.2.3 Fan works have strong commercial value
At first, fan works only developed and spread among a group of people, and the high creative enthusiasm of fan authors was entirely the result of their spontaneous love for the original work. However, with the rapid advancement of network technology, the dissemination channels and creative purposes of fan works have changed. The creation of fan works has become more than just for communication and sharing among like-minded people. Many people have seen the huge business opportunities behind fan works, and some fan works have shown a trend of catering to market demand, and some are even created purely for profit. The above statement does not indicate that fan works should not have commercial value, but rather that fan works, as an emerging form of creation, have stronger commercial value than general works.

1.3 Classification of Fan Works

The types of fan works are very diverse, and the author divides them into general fan works and fan works with legal significance.

1.3.1 General types of fan works

Fan works can be classified into the following categories according to different standards. Among them, according to the different sources of the characters in the works, they are divided into real fan works and virtual fan works. As the name suggests, real fan works are fan works based on real-life characters, entertainment stars, and other themes. For example, the fan fiction "*Falling Down*" is a fan work mainly aimed at entertaining celebrity Xiao Zhan. Virtual fan works are secondary creations that borrow virtual characters from the original work, such as "*The Legend of Wukong*", which borrows virtual mythological characters from the original work. According to the different genres of fan works, they can be divided into literary fan works, graphic fan works, and other types of fan works. This classification is mainly based on the form in which fan works are expressed.

1.3.2 the legal sense OF FAN WORKS TYPES

At present, the academic community generally recognizes a classification method based on differences in originality for fan works, which can be divided into deductive fan works and non-deductive fan works. Fan works created through modification or continuation, while

maintaining consistency with the background or main theme of the original work, are classified as deductive fan works. As scholar Wei Zhi has stated, "As long as a work is created based on another prior work, and the ideas and content of the prior work are transplanted into later works, it belongs to deduction." One of the more typical deductive fan works is Gao Jia's continuation of "*Dream of the Red Chamber*". In China's copyright law, there is actually no clear legal definition for deductive works, which are more regarded as an academic or theoretical concept. As Professor Wu Handong stated, "Deductive works are a general term for 'secondary works' such as adaptation, translation, annotation, and organization, referring to various works created on the basis of existing works.". Deductive fan works are secondary creations based on the original work and cannot exist independently without the expression in the original work, so they are included in deductive works.

The appearance of fan works is very similar to that of deductive works, but it cannot be uniformly classified as deductive works for all fan works. On the one hand, some fan works have extremely high originality and have little reliance on the original work. They only borrow certain elements from the original work and have little connection with the content of the original work. Essentially, they can be said to be a brand new work and do not belong to the scope of deductive works. On the other hand, there are various forms of creation for fan works, while deductive works only have four types: adapted works, translated works, annotated works, and organized works. Therefore, the author believes that fan works with high originality and low reliance on the original work should be defined as non-deductive fan works.

2.The Legitimacy of Copyright Protection for Fan Works

Under the framework of China's existing copyright law, although fan works cannot be fully classified as derivative works, granting copyright to fan works and protecting them under copyright law does not conflict with the copyright system.

2.1 Theoretical Basis for Copyright Protection of Fan Works

2.1.1 Meet the conditions for works protected by copyright law

As the object of copyright, works are also protected by the Copyright Law. According to Article 2 of the Implementation Regulations of the Copyright Law, "works referred to in the Copyright Law refer to intellectual achievements in the fields of literature, art, and science that are original and can be reproduced in some tangible form." Article 3 of the Copyright Law stipulates that "works referred to in this Law refer to intellectual achievements in the fields of literature, art, and science that are original and can be expressed in a certain form. The essential elements for the copyrightability of a work include both the substantive conditions of originality and the formal conditions of "reproducibility", with originality being the core element of the copyrightability of the work. As discussed earlier, fan works have originality. Fan works are new works created by borrowing certain elements from the original work, just like *"The Legend of Wukong"* borrowed characters from the original *"Journey to the West"*. Fan authors create a completely different content and storyline through re-creation. The requirement of copyright law for "reproducibility" is to adopt the terms "replicable" or "fixable", which means that "copying in some tangible form" or "expressing in a certain form" both reflect the attribute of "reproducibility". Fan works are the dissemination and sharing of ideas fixed on a medium through text or other forms, with replicability and fixability, meeting the requirement of "reproducibility" of works. Therefore, fan works fully meet the conditions for work protection stipulated by the Copyright Law.

2.1.2 In line with the legislative purpose and intention of China's Copyright Law

The opening statement of China's Copyright Law is: "In order to protect the copyright of authors of literary, artistic, and scientific works, as well as the rights and interests related to copyright, encourage the creation and dissemination of works that are beneficial to the construction of socialist spiritual and material civilization, and promote the development and prosperity of socialist culture and science, this law is formulated in accordance with the Constitution. In short, the legislative purpose of the Copyright Law is not only to protect the copyright and related rights

and interests of authors, but also to encourage the creation and dissemination of works and promote the development and prosperity of cultural undertakings. This also means that the Copyright Law does not blindly emphasize the interests of original authors at the expense of public interests, which presents the personality theory and incentive theory of copyright legitimacy theory, as well as the balance of interests theory of copyright. As derivative works of the original work, fan works are not entirely original works, but they are new works that are different from the original work. Fan works should be recognized and protected. This does not mean that the rights of the original author are not protected. The rights of the original author should be reasonably protected under copyright law rather than unlimited protection. Regarding this, some scholars have also pointed out that "excessive emphasis on the rights of the original copyright owner is not fully justified when the author of fan works has put in a lot of intellectual labor. It can be seen that copyright law emphasizes the prohibition of infringing on the legitimate rights of others, rather than prohibiting fan works with original content. In addition, it is the nature of human literary and artistic creation activities for fan authors to create fan works. The creation of fan works greatly stimulates the overall literary and artistic creativity of society, and plays a good role in promoting the vigorous development of cultural undertakings.

2.2 The Practical Significance of Copyright Protection for Fan Works

2.2.1 Fan works promote the dissemination and development of the original work

The existence of a work is for dissemination and sharing. If it is just an idea in one's own mind, it cannot constitute a work, nor will it have any characteristics of a work. The author reflects their ideas in the work, hoping to be recognized and understood by people, and also hoping to be recognized and loved by a wide range of readers. They also hope that their work will last forever. However, over time, due to the inherent limitations of the works and the constant emergence of new creations, readers' emotional resonance with the works will gradually weaken, and ultimately these works may be submerged by the tide of history, fading out of people's memories. However, the

creation and dissemination of fan works have invisibly provided free publicity for the original work. For readers who have not read the original work, it attracts them like a magnet, making them have a strong desire to read the original work. For those old readers who have already read the original work, it also brings different perspectives and new understandings. As Professor Wang Zheng said, "Fan works can increase the exposure of works, expand the fan base of works, and are a free and effective form of promotion that may bring more benefits to copyright holders. In addition, fan works can also bring more inspiration to the original author. In traditional creation, authors do not have the opportunity to communicate with readers, but fan works make up for this deficiency and become a bridge between the original author and readers, providing more creative inspiration for the original author's re-creation. In addition, there is no borrowing or being borrowed relationship between fan works and the original work. Fan works also provide support and supplement to the original work, and do not constitute a substitutive competition with it. Just like in the character settings of each work, we find that not all characters that appear in the original work are clearly and specifically described in terms of their personalities, backgrounds, etc. Some characters are only briefly mentioned, and works by the same person that borrow these briefly mentioned characters may provide support and supplement to the original work. Therefore, the author believes that fan works can promote the dissemination of the original work, broaden the audience of the original work, increase the depth and breadth of the original story, and continue the vitality of the original work.

2.2.2 The positive impact of fan works on cultural undertakings

Fan works not only have many positive impacts on the original work, but also play a positive role in cultural inheritance, cultural exchange, and other aspects, which is of great significance in promoting cultural innovation and improving cultural level. In today's era, due to the impact of foreign culture and historical background, the younger generation in China has significantly reduced their interest in reading their own classic literature, which undoubtedly poses a challenge to the inheritance of culture. However, it is worth

noting that the popularity of fan works and their innovative dissemination methods have provided new opportunities to expand the influence of classic literature. By attracting the attention of young people, fan works can to some extent stimulate their interest in reading, encourage them to actively read and understand classic literature, and inject new vitality into the inheritance of culture. This trend not only demonstrates the potential of cultural innovation, but also provides us with new ideas to promote cultural inheritance. Secondly, fan works can also play a role in cross-cultural communication. Many fan works are actually based on works from countries such as the United Kingdom, the United States, Japan, and South Korea, which are popular for their unique cultural elements and styles and have a considerable influence overseas. Through secondary creation of fan works, people from different regions and cultures can communicate and understand each other through fan works, which plays an important role in promoting world cultural exchange. Finally, fan works can also promote cultural innovation and enhance cultural level. With the progress of society and the rapid development of technology, fan culture continues to expand and innovate in its unique form, covering multiple fields such as fan fiction, fan music, and fan videos. These fan works based on the original work not only bring us new storylines and character settings, but also showcase cultural charm in more diverse and rich forms by incorporating various new elements such as music and animation. This process not only promotes cultural innovation, but also injects a continuous stream of vitality into the prosperity and development of culture.

3. Suggestions for the Protection of Fan Works Under the Copyright Law

In the digital network era, fan works has flourished with the rapid progress of Internet technology. As a new form of creation, the legal status of fan works needs to be clarified urgently, and their copyright should also be timely and fully protected.

The first step in protecting and regulating fan works should be to clarify the concept of fan works. Although there are different opinions on the specific definition of fan works at the current stage, the core viewpoint is consistent: "Fan works are secondary creations based on

borrowing some elements from the original work, which are closely related to the original work but have their own originality." Secondly, we need to clearly define and clarify the types and protection mechanisms of fan works. Based on the analysis above, fan works can be divided into two categories: deductive fan works and non-deductive fan works. Deductive fan works must rely on the original work as the basis of their creation, and therefore can be managed and protected in accordance with the relevant legal system of deductive works. For non-deductive fan works, as they are created by borrowing elements from the original work and have weak attachment to the original work, they have high originality and cannot be classified under any category in copyright law. Therefore, relevant legal provisions should be separately formulated or the scope of relevant categories should be expanded to include non-deductive fan works within the protection scope of copyright law. Finally, the rights and obligations of creators of fan works should be clearly defined. Fan works are recreated works that borrow elements from the original work, so fan creators should fully respect the original author, as shown in the following points. Firstly, in fan works, the source of borrowed elements should be clearly stated, indicating the source of the borrowed parts, and taking the initiative to inform the original author's name and the work. Secondly, in the process of creating and disseminating fan works, the wishes of the original author should be fully respected and followed. If the original author has explicitly expressed opposition to any form of fan work, the fan author should unconditionally abide by and respect this decision. If a fan author has already created a fan work, the fan author cannot disseminate the fan work to the outside world, let alone publicly publish it. Thirdly, the creative freedom of fan works should be carried out under the premise of abiding by laws and regulations. It is not allowed to use elements from the original work for pornographic or vulgar fan creations, and it is not allowed to maliciously distort or tamper with the characters in the original work. The creative content of fan works should be positive and

full of positive energy. For the rights of creators of fan works, in addition to enjoying the copyright of fan works, the right to freely express and create, and the right to exclude illegal infringement by others, they also enjoy the freedom to use non original elements in the original work.

4. Conclusion

When the granaries are full, one knows propriety; when clothing and food are sufficient, one knows honor and disgrace. The material aspect of life is the cornerstone of spiritual development. Only when material life reaches a certain level of abundance, will people begin to pursue higher levels of spiritual satisfaction. As an emerging form of literary creation, fan fiction is a reflection of people's pursuit of higher spirits. In the digital network environment, the rapid development of fan works will lead to more and more game conflicts, and the conflicts between fan authors and original authors will become increasingly severe. Therefore, in order to ensure the healthy growth and prosperity of literary and artistic works in a stable environment, it is necessary to establish a clear legal status for fan works as soon as possible, improve the relevant content of copyright protection for fan works, transfer fan works from a regulatory blank area to a standardized legal regulatory system, and promote the positive and healthy development of fan works in the future.

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