

Exploring the Protection of Copyright for Firework Performances

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Abstract

China's economy and culture keep moving forward, and atypical works appear more and more in the process of development. After the latest revision of the Copyright Law came into force, there are still controversies over the relevant atypical works. The copyright issues behind the creative achievements, such as the ten scenic hairstyles of West Lake, martial arts performances, musical fountains and fireworks shows, have also received wide attention. The copyright protection of fireworks performances faces the dilemma of the vague standards of creativity and unclear measure of infringement determination. It is necessary to analyze the legal connotation of fireworks performances, propose the standard of originality and clarify the standard of infringement to improve the copyright protection of fireworks performances.

Keywords: fireworks show, copyright, dilemma and optimization

1. Introduction

In recent years, creative achievements such as the ten scenic hairstyles of West Lake, martial arts performances and musical fountains have emerged one after another, and the copyright issue behind them has received widespread attention. Article 3 of China's newly revised Copyright Law not only specifies the objects protected by copyright and enumerates eight types of statutory works but also provides for the concept of works, i.e., it explains the constitutive elements of works. Although the issues related to fireworks performances have

not been covered in judicial practice, copyright dispute cases of atypical works such as the ten scenic hairstyles of West Lake, martial arts performances and musical fountains have been expected. Still, the author searched 46 articles on the China Knowledge Network with "subject: fireworks performances" as the search condition and did not find any relevant articles in the discipline of law. Articles. To better protect the interests of the rights holders of fireworks shows, further discussion and research on fireworks shows are urgently needed.

2. Analysis of the Legal Content of Fireworks

Displays

Fireworks have a long history and have become a folk entertainment commodity as early as the Northern Song Dynasty. With the progress and development of science and technology, the types of fireworks have gradually become diverse and sophisticated, and the legal issues behind them are worth exploring.

2.1 *The Workability of the Fireworks Display*

China's newly revised Copyright Law has officially come into effect. The current Copyright Law has changed the definition of work and types of work. Article 3 states that a work is "an intellectual achievement in the fields of literature, art and science that is original and can be expressed in a certain form", and adds an open-ended underwriting clause on types of work, i.e., other intellectual achievements that meet the characteristics of a work can also be recognized as a work. This article expresses the creation to be recognized as a work is required to have certain conditions: first of all, the creation should belong to the field of literature, art and science; secondly, the creation should have originality; again, the creation can be expressed in some form; finally, the creation is the intellectual achievements of people. (Jiaqi Xiang, 2020) Now we will take the general elements of work as the standard and gradually explore whether the fireworks show can be recognized as a work.

2.1.1 Whether the Fireworks Display Belongs to the Field of Literature, Art and Science

From the point of view of textual interpretation, "science" in the Xinhua dictionary refers to a system of knowledge that reveals the objective laws of nature, society and thinking. Obviously, such a fireworks show only presents brilliant colors and patterns to the public and does not reflect the revelation of objective laws of nature. In the Xinhua dictionary, "literature" refers to an art that can create a social image through the medium of language to understand social life truly. The fireworks show is created by using different additives, their shapes, ignition points, explosive properties, gas production and other factors to influence the flight path of the fireworks after they are set off, thus creating different effects. It is not a way to express one's emotions through language and therefore does not belong to the field of literature. In the Xinhua dictionary, "art" means to understand social life by shaping things and to put the

author's thoughts and feelings in shaping. The most basic requirement for creating art is that the audience can perceive the author's thoughts and feelings through visual and auditory forms and gain an aesthetic experience. The fireworks show is usually based on a particular theme, and many elements in the fireworks show are carefully designed and choreographed, expressed as a specific structure of brilliance, sound, rhythm, rhyme, shape, etc. When the general public enjoys a fireworks show with a specific theme, it can evoke a deep resonance in their hearts. Therefore, fireworks show should belong to the field of art creation.

2.1.2 Analysis of the Originality of the Fireworks Show

Originality means, on the one hand, that the creation is done independently by the creator himself, either from scratch or by creating a new work based on an existing work that is objectively and visibly different from the original work; on the other hand, it must meet a minimum level of creativity. (Yu Zhang, 2022) From this, originality can be considered as "independently" plus "creatively". The "independent ground" requires that the creation not be plagiarized and reflect the independent thinking of the creator; the "creative ground" requires that the creativity meets a certain level of creativity and is human creativity. The U.S. wild monkey selfie case and the Japanese seal show copyright dispute are strong evidence that creativity must demonstrate human creativity. The fireworks show reflects the control and arrangement of the designer behind the fireworks in terms of time, shape, color, etc., which undoubtedly reflects the high degree of originality poured into it by the creator.

2.1.3 Whether the Fireworks Display Can Be Performed in a Particular Form

The dichotomy between thought and expression is the basic principle of the Copyright Law. That is, copyright does not protect the ideas thoughts in a person's mind but protects the specific expressions that express the views in a particular form. At the same time, the restriction of the element of "reproducibility" has also been deleted, and it only emphasizes that the expression can be reproduced in a certain way. This makes the copyright protection of such fleeting and non-fixed creations as fireworks show legally enforceable. In a fireworks display, the artistic effect produced by the fireworks can

be expressed through the medium of fireworks. Therefore, the fireworks show can be described and reproduced in a particular form.

2.1.4 Whether the Fireworks Display Reflects the Results of Human Intelligence

The constituent element of intellectual achievement includes the effects of mental and physical labor. The fireworks show is analyzed and understood by the designer on the theme of the show through the selection and editing of fireworks shapes, colors, sounds, sparkling effects, etc., according to the different chapters of the article. The fireworks show can completely reflect the designer's feelings, and the designer puts his emotions into the fireworks blooming effect, which undoubtedly belongs to the scope of intellectual achievements.

2.2 Identification of Fireworks Shows and Existing Types of Works

Usually, to protect a new creation, the following two stages of qualitative categorization of the product should be completed: first, to determine whether the product constitutes a work; second, to determine what type of work the particular expression belongs to. From the above discussion, it is clear that fireworks displays can be recognized as works. Then we move on to the second stage, different kinds of results are not protected by copyright in the same way, all to know clearly what kind of works the fireworks show should be recognized as.

2.2.1 Whether Fireworks Shows Can Be Included in the Scope of Fine Artworks

The concept of fine artworks is clarified in the Regulations for the Implementation of the Copyright Law, which refers to paintings, calligraphy, sculptures and other works of plastic art with aesthetic significance composed by lines, colors or other means in a flat or three-dimensional manner. At the same time, the artworks can be further divided into two categories of pure artworks and practical artworks. (Huang Sheng, 2019) One of the pure artworks refers to the works that only provide ornamental value, such as watercolor paintings, prints, oil paintings, etc.; the second one is also easier to understand, which refers to the works that can provide not only ornamental value but also practical value, such as ceramic art. For the fireworks show, is evident that it cannot be identified as pure artwork. Most pure artworks are made of drawing board or paper as the

carrier and then formed by the author's creativity and imagination by carefully sketching the paint on the page. At this time, the work can be fixed on the material carrier and expressed. In the fireworks show, the visual effect of the fireworks and the chemical reaction of the air in the sky cannot be retained for a long time. The practical artworks are a combination of practical value and ornamental value. At the same time, the fireworks show is a reflection of the collision of colors, the arrangement of shapes and sounds, etc., so that the audience can enjoy the excellent performance, more reflecting the ornamental value, as for the practical value does not seem to recall. Therefore, it is not appropriate to put the fireworks show into the scope of artworks.

2.2.2 Whether the Fireworks Display Can Be Included in the Scope of Audiovisual Works

The current Copyright Law of China has amended the term "cinematographic works and works created by methods similar to the filming of films" to "audiovisual works". Still, it does not provide a clear definition of audiovisual works. Therefore, the only option is to refer to the International Registration Treaty for Audiovisual Works, which states that "an audiovisual work means any work consisting of a series of related fixed images, with or without accompanying sound, capable of being seen and, when accompanied by sound, capable of being heard." This amendment undoubtedly protects short videos, webcasts and other new phenomena that have emerged with the development of new media. It eliminates the requirement of "filming," and the scope of audiovisual works is undoubtedly more extensive than that of previous film works and similar electrical works. Can fireworks shows be included in the range of protection? The author believes that it is not possible because the fireworks show presents the colorful fireworks effect is short-lived and cannot be fixed, which is not in line with the definition of audiovisual works mentioned above. Moreover, the emergence of audiovisual works is mainly due to the development of new media and technology. The purpose is to promote the development of the film and television industry, including but not limited to movies, TV series, live game screen, short video, etc. And fireworks shows do not belong to this film and television industry. Therefore, it is not appropriate to include fireworks shows in the scope of

protection of audiovisual works.

2.3 The Relationship Between Fireworks Shows and Atypical Works

In the current era of, new discoveries, new research, and new intellectual achievements are made almost every day, and the types of works listed in the Copyright Law before the amendment do not fully cover the endless creative achievements. In the case of the Musical Fountain, the Copyright Law also adopted the “legalism of work types,” and the court of the second instance included the Musical Fountain in the scope of artworks for protection. Protection.¹ The author believes that the inclusion of a “musical fountain” into the scope of artworks seems to break through the general public’s perception of artworks, which is far-fetched, but it is also a desperate move. Therefore, the newly revised Copyright Law has chosen an open legislative model for the types of works, amending “other works prescribed by laws and administrative regulations” to “other intellectual achievements that conform to the characteristics of works,” which has become the bottom clause for the protection of works under the law. The clause.

An atypical work is an intellectual work that fully meets the constitutive elements of a work and can be protected by the Copyright Law but cannot be covered by the types of works explicitly listed in the Copyright Law, so it is called an atypical work. According to the preceding discussion, the fireworks show satisfies the constitutive elements of work under the Copyright Law, but it seems that the existing statutory types of works cannot cover it, and at this time, it is included in the scope of protection of atypical works by the provisions of Article 3, Paragraph 9 of the Copyright Law.

3. Difficulties Faced by Copyright Protection of Fireworks Display

As society moves forward, people are no longer just satisfied with material needs but pay more attention to spiritual enjoyment. Every spectacular fireworks display, with the right atmosphere, always strikes people’s hearts. However, the legal issues behind such a standard fireworks show in China are rarely asked about, and many legal problems have arisen.

3.1 Blurred Standard of Originality

The Copyright Law was amended in 2020 and

came into effect on June 1, 2021, amending the term “other works prescribed by laws and administrative regulations” in the Copyright Law to “other intellectual works that conform to the characteristics of works” and implementing an “open model of work types”, of which the eight types of works listed in Article 3 of the Copyright Law are only examples. This model can greatly improve the problem of rigid types of works brought about by the “statutory work model,” while the shortcoming lies in the different standards for the courts to recognize creative achievements as works, which requires the discretion of judges when new situations and problems arise. The judges’ choice to judge cases is influenced by subjective aspects such as cognitive level and cognitive perspective and lacks uniform standards and certainty. According to the above analysis, there is no specific provision on the issue of the originality of the work in the underwriting clause. Still, the point of identity is related to whether the fireworks show can become a work and whether it can be protected by copyright. This may cause other judges to have other determinations on the nature of the fireworks show, leading to different judgments in the same case.

As for fireworks, they can be broadly divided into two kinds: one is the unique fireworks designed by the designer according to a certain theme; the other is the fireworks set off by everyday people’s homes for the New Year holidays, which are usually regular fireworks such as 10 rounds and 20 rounds. We all agree that the first type is considered work. Some scholars believe that traditional fireworks cannot be considered as works because, compared to the first type, firstly, there is no originality in conventional fireworks; secondly, they do not reflect the designer’s thoughts and feelings, and they do not reflect the intellectual achievements of human beings, so they cannot satisfy the composition of works: some scholars also believe that conventional fireworks are usually used to celebrate a certain holiday or to pay tribute to a certain family member. Some scholars believe that traditional fireworks are typically designed to celebrate a particular holiday or to pay tribute to a loved one. In contrast, ordinary fireworks do not have a unique design but also have a fixed design shape. For celebrating a holiday, one can choose a colorful, fiery red firework shape, and for paying tribute to a loved one, one can choose a

white chrysanthemum firework shape. This shows that the blooming effect of conventional fireworks is also creative, can reflect certain thoughts and feelings, and can also be included in the scope of the work.

3.2 Unclear Criteria for Determining Infringement

Copyright infringement means engaging in activities controlled, restricted or prohibited by the author as authorized by the copyright law without the copyright owner's permission. In China's copyright law, the criteria for determining copyright infringement have not yet been legislated, but the standard of "infringement = contact + substantial similarity" is generally accepted in practice. This rule requires that the infringer can contact the infringed work, that the infringed work is substantially similar to the infringing work, and that the copyright is infringed when both conditions are met.

First of all, from the perspective of "contact" to discuss. The fireworks show is a fireworks display with a unique burning material "shell" sent to the sky and blooming, forming a beautiful presentation. The fireworks effect covers a wide area is the characteristic of the fireworks themselves. Then the area covered by the impact of the fireworks show is relatively wide, and the number of people who can enjoy the fireworks show is enormous and non-specific. With the rise of internet video, people can now watch fireworks shows from all over the country without leaving their homes and through the internet. Because such a situation exists, it is difficult to directly prove that the infringer has been exposed to the fireworks show and that the infringer has previously viewed the fireworks show.

Second, we will discuss the aspect of "substantial similarity." "Substantial similarity" refers to the similarity of the primary expression of the infringing work and the infringing result. In this regard, the infringed work is compared with the corresponding part of the infringing work to determine whether they are substantially similar. Whether the primary expression of two pieces constitutes substantial similarity is greatly influenced by the cognitive level and position of the judging subject and is highly subjective. The object protected by the fireworks show is the blooming product of fireworks in the sky, and the blooming product of fireworks is mainly composed of color, shape,

sound and movement, and both of them satisfy the originality of the work. How to determine whether the effect of two similar fireworks shows constitutes substantial similarity? In this way, the general copyright infringement standard seems somewhat "unsuitable" when applied to fireworks shows.

4. Fireworks Show Legal Copyright Protection to Improve the Idea

4.1 Clarify the Originality of the Fireworks Display Standards

In the newly amended Copyright Law of 2020, the underwriting provisions are ambiguous. The controversy over atypical works in theory and practice often focuses on the definition of originality so that the originality can be further clarified.

The legislative purpose of Copyright Law is to encourage creators to create new works. Under this open legislative model, the creators of atypical works can come under the protection of the Copyright Law only by proving that their creative achievements match the composition of the works, which will strongly encourage people to create in a diversified manner and thus promote the development of works in the fields of literature, art and science. Therefore, based on the legislative purpose of the copyright law, we should maintain a tolerant attitude toward the newly emerged atypical works and moderate the standard of originality for considering them as works.

In response to the previous controversy, whether the effects shown by these two fireworks can be recognized as works need to be discussed in separate cases: for the first large fireworks display, at this time the designer controls the time of the fireworks in the air by arranging many elements such as light, color, sound, and shape in the fireworks so that the fireworks show a unique figure in the sky. The minimum requirement of originality as a work is satisfied and can be protected by copyright law. Second, for conventional fireworks, after people buy them at major stores, they only need the perpetrator to light the fireworks fuse to enjoy the fireworks show. Although the lighting of traditional fireworks can also reflect specific thoughts and emotions, such as happiness or remembrance, and acknowledge the existence of individual creativity, the fireworks effect of traditional fireworks has almost become common. Most of the effects shown by

traditional fireworks on the market are the same, which means that the degree of “creation” does not reach the standard of works, so the fireworks cannot be recognized as work.

4.2 Clarify the Criteria for Determining Infringement

For the determination of fireworks shows infringement, the standard has little ambiguity because of its own uniqueness. The author makes the following suggestions:

First, the determination of “access” is not limited to using direct evidence to prove that the infringer had prior knowledge of the infringing work, but “access” only requires the existence of a likelihood of expertise by an unspecified person. Any person presumed to have had advance access to or knowledge of the infringed work by the general and reasonable circumstances of the society can usually be considered as having “contact.” Due to the nature of fireworks shows, it is difficult to determine the fact of the infringer’s contact directly, so the choice is made to presume the possibility of the infringer’s connection with the infringed work to think.

Secondly, the determination of “substantial similarity” is influenced by the cognitive level and position of the judging subject. Each person is likely to make different judgments after watching the two fireworks shows. Then, we should take the cognitive level and position of the general public as a reference and compare the two fireworks shows from the perspective of an ordinary citizen to see if any differences make the two fireworks indicates significantly different from each other. If not, then we can determine that there is substantial similarity.

5. Conclusion

With the further development of society, various new intellectual achievements emerge, such as a musical fountains, ten scenic hairstyles of West Lake, a fireworks displays and other creative accomplishments, and there will be more creative achievements to follow. To protect these creative achievements and keep the creators enthusiastic, it is necessary to go further to improve the law and close the legislative loopholes to promote prosperous development within the fields of literature, science and art.

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¹ See Beijing Intellectual Property Court. (2017). Beijing 73 Civil Final 1404 Judgment.