

The Core of Dance Works' Protection in Chinese Copyright Law

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Abstract: There is no such kind of art which is interpreted by public, is judged emotionally and is explained mysteriously [1]. The issue about how to protect dance work by copyright law triggers many people to discuss. Some Chinese scholars responded this questions with their own opinions like protecting the records of choreography work, protecting the whole things on the stage, protecting the design of actions. The explanation of dance work in many countries' legislation and in Chinese judicial judgments are different dramatically, which reveals the veil that the connotation of choreography work is complicated. The combination of theater and dance makes dance art become an independent art category. At the same time, it also makes the dancing performance space is still limited in a special area. Network technology has brought new impacts to the dance works' copyright protection. So it is first to protect design of the action and it is also need to contain other elements that are some necessary materials, like lights, costumes, props and so on. The former is the soul of dance work and the later may be show the author's originality at sometimes.

1. Introduction

Yang Liping v. YunHaiyao [2] results in intense discussions on copyright problem of dance work. From the perspective of dance work's presentation, whether it includes other elements besides dance movements, postures, and dancing expressions. From the perspective of protection value, the scope of identification of dance works is more limited, and the protection of dance works is more convenient. If more elements are included, the the dance works' copyright protection. Threshold is raised. If only dance movements are regarded as a requirement for the protection of dance works, the scope of protection of dance works is too narrow.

2. The confusion of defining dance art

2.1 Various perspectives for defining dance works

As an independent category, dance is later than other arts, and dance performances are often mixed with other artistic components, which makes it difficult for the copyright law to identify dance works. Since dance works are included in the protection of copyright law later than other works, it is difficult to directly apply the traditional legal principles and basic concepts of copyright law to dance works

[3]. Due to the multiple understandings of the essence of dance, such as the fleeting character of dance performances, and company with music, costumes, and props, these characteristics lead to multiple dimensions in the definition of dance works.

2.1.1 The fleeting nature of dance performances and the protecting way by records

As a phenomenal art, dance needs to be recorded or fixed in order to be permanently transmitted. Only by doing so, people can enjoy the dance work repeatedly. So it is necessary to fix the dance works. However, this kind of protection requires that only by fixing completely, can authors obtain qualifications to be protected by copyright law, which is also the significance of the dissemination of dance works. Therefore, what a dance work protects should be a series of movements and stage elements, which must can be reflected in writing or fixed in other ways.

Chinese current copyright law only protects the design of dance movements in the legal sense, and requires that the dance movements can be fixed or stylized [4]. In order to achieve the purpose of the creator providing copyright certification in the event of a dispute in the future.

2.1.2 The characteristics of the stage and the perspective of comprehensive protection

The comprehensive character of dance was founded by the father of ballet, George Norville. He emphasized the narrative of the plot in the way of dance "pantomime", thus becoming a form of theater - ballet [5]. Accordingly, in order to complete the narrative on stage, Norville regarded dance as a plastic art, and Norville believed that a dance drama is a picture and the stage is the canvas [6]. Norville's view of stage effects naturally made stage elements an integral part of dance. Among legal scholars, there are similar views, such as dance, as a comprehensive art that closely combines temporality and space, often integrates music, poetry, drama, painting, acrobatics and other means to become an independent art category [7]. These views are all about expanding the focus of dance from the dancer to the stage. Dance performance needs to be based on the stage, which is created for the purpose of stage performance, and the scope of dance design is expanded from the movement design of dance performers to stage background music, formations, props, costumes and other elements. The comprehensive nature of dance works leads to the fact that the attitude of the copyright law to protect dance works should also be positive, and the stage elements contributed to the presentation of dance works naturally fall within the scope of protection of dance works.

2.1.3 The dancing language and the protecting scope on designing of movements

The protecting way which focus its scope on designing of movements, rather than the whole things on stage or the records of dancing. The design of dance movements is just reflected in text descriptions, action marks, drawings or recorded dance pictures [8]. This viewpoint breaks through the limitations imposed by the fixed nature of dance works, but it also adds another requirement, which is the need for the design to reflect ideas and emotions. Therefore, the theory of movement design not only emphasizes the movements themselves, but also requires that they be accompanied by the manifestation of ideas and emotions, so as to exclude technical, skillful, and procedural movements from the scope of copyright protection for dance works. The main content of the theory of movement design is how to design movements. The design of dance movements requires creative work to inject aesthetic emotions into a certain phenomenon in social life, to typify images in social life, to form artistic concepts, to generate dance intentions, and to use professional skills to transform dance intentions into images in professional dance works, thus completing the dance creation.

2.2 Different scopes of copyright protection for dance works

2.2.1 Different views of Chinese courts

In *Yang Liping v. YunHaiyao*, the first and second trials reached different conclusions. In the first instance, the judge held that "the originality of the dance work can be reflected not only in the static dance posture, but also in the connection, choreography and combination of dynamic dance movements" and "under the background of the moon, the dance movements that show the beauty of the curves of the woman's body are made through the body parts of the performer, and the above-mentioned continuous dance movements are transformed into abstract and changeable body language, and with the cooperation of lighting, choreography, clothing, music and other elements, the holiness of the moonlight and the softness of the woman under the moonlight are artistically expressed. Dance works that fall under the Copyright Law" [2]. The judge of first instance emphasized that the originality of a dance work is reflected in the movement, and also incorporated other stage elements such as lighting and stage beauty, forming a static movement under the stage light is also the conclusion of the original expression of the dance work.

On the contrary, in the appeal, the judge considered that "the function of the actress's make-up, background lighting, music and other elements is to create a beautiful atmosphere on the stage and help actress dance more charmingly. So these elements are not the contents of original design about movements, gestures, facial expressions and cannot be protected by copyright law. And the judge pointed out that although the Regulations for the Implementation of the Copyright Law provide for "etc. " as a supplement to successive "movements", "gestures" and "expressions", according to the general rules of legal interpretation, what is included in "etc. " here should be limited to aspects of the same or similar nature as the "movements", "gestures" and "expressions" already explicitly listed, and should be the body language of the designer dancers [9].

In summary, the judges' determination of dance works is divided on the following two points: one is whether the scope of the dance work includes other stage elements; The second is whether the static dance movements of a single person constitute the original expression of the dance work. The court of first instance emphasized that the elements of a dance work should include other elements, expanded the scope of recognition of a dance work based on the idea of overall protection, and expanded the "etc. " stipulated in the Implementing Regulations to include the stage background and lighting. On the contrary, the court of second instance held that the object of protection of dance works excluded "makeup", "lighting" and "sound effects", and was limited to original designs such as "movements", "gestures" and "expressions" of dance. Although the court of second instance corrected the scope of the determination of dance works, it seemed to be too strict in determining the specific expression of dance works.

2.2.2 Legislation of dance work in some countries

When defining a work in Article 2 of the Berne Convention, the concept of a choreographic work is clarified by way of example only, but the concept of a choreographic work is not clearly made. Similarly, Article 102 of the U. S. Copyright Act includes dance works in its general provisions by specifying the categories of works, but the U. S. Copyright Act does not give a clear answer as to what the specific connotation of dance works is.

However, other countries in the world have different forms of defining dance works: in the first way, dance works belong to dramatic works and provide for the juxtaposition of dance works and mime works, such as the UK and Korea. The second way, the dance work is classified as a mime work, such as Germany. The third way, dance works are juxtaposed with dramatic works, such as Italy. The fourth way, dance works are juxtaposed with pantomime works, such as Japan. The fifth

way, pantomime works are treated as dance works, and dance works are juxtaposed with dramatic works, such as France.

From the definition of dance works in the aforementioned countries, we can see that most countries cannot make a clear distinction between dance works, dramatic works, and mime works, or at least it is difficult to screen them in the legislative provisions. This ambiguous definition seems to explain why it is so difficult to recognize and protect dance works. At the same time, all three types of works seem to be a combination of physical movements and related stage elements based on stage performances. As for how to distinguish the three is the key, so it is not difficult to understand that the first instance decision mentioned that dance works should include to stage elements such as costumes and props. Therefore, from the classification or conceptual definition of dance works under the copyright laws of various countries, it seems that the identification of dance works are all clarified on the basis of theater as the venue form and stage performance.

3. Challenges of dance art's development

Although the main existence of the dance industry once depended on the theater, can dance works be performed only in the theater?

3.1 The influence of theater on the development of dance art

The essence of dance should be understood as follows: that is, physical movement is the core of dance, and the related dance materials are common associations in the popular understanding of dance, but these do not concern the essence of dance. The synthesis of the art of dance refers to the synthesis that occurred when various arts were chaotically mixed together, and in modern times, especially after the creation of ballet and the modern framed stage, there is a new "synthesis" due to dramatization and the use of modern stage technology [10]. Therefore, in terms of choreography, dance can be said to be a "comprehensive art" only under limited conditions. For example, the chaotic nature of its creation and the comprehensive use of contemporary stage technology have made dance a beautiful "commodity", and the richness of artistic expression on stage has led to the misunderstanding that dance works, like complex collaborative works, must be performed in a variety of ways. It is because of the richness of the artistic expression of the stage that the misconception has arisen that dance works are like complex collaborative works, that their performance requires the synthesis of various stage elements, and that each stage element presented on stage constitutes the scope of the dance work.

However, when dance is placed in the current context, the "frame" of dance is a yoke imposed by modernity, especially since it has been legitimized as a modern art, there has been an inherent tension between framing and de-framing [11]. Although dramatic art theory has become widely accepted, dance with its origins in mime, like many religious dances, has tended to be more choreographed than dramatized in later history [1]. Especially in the process of the development of information network technology, the unparalleled speed of transmission and the strength of influence that the network has, so that the stage and the field outside the stage can be presented twice before the screen, which has emerged a new way of dance expression. Professionalized stage performance is no longer the only form of dance performance, and the stage is no longer the only condition for the existence of dance [11].

3.2 The impact of the internet on the protection of dance works

The development of information networks has greatly influenced the development of the copyright industry. Digitalization not only provides the possibility of accurate reproduction, but also facilitates

the creators to make modifications and edits. Real-life dances can be digitally filmed, and the uploader can edit the filmed content and put it on the network for broadcast, for viewing, commenting and sharing by network users. The digital technology and the information network can make the fleeting dances available to the public and move the dance audience from the audience of the dance theater to the cell phone and computer screen. By restoring the reality of dance through virtualization, the dance audience is transformed from a fixed theatrical reception environment into a new perceptual situation that is not controlled by time and space. The separation function of the picture frame is no longer realized through the theater. This fundamentally changes the three-dimensional spatial structure and dynamic existence of traditional dance art forms into a four-dimensional or even multi-dimensional multimedia interactive platform [12]. The dependence of dance's existence changed from stage to network.

This does not change the reality of dance's existence, because the advanced media survival does not change the realization of dance's symbolic power. The realization of the symbolic power of dance relies on the creator of the dance work to have a connection with the receiver of the dance. Because dance's own style of force requires the audience's recognition and re-creation, and the symbolic nature of the force of dance's style of manifestation will bring space for dance's broad applicability [13]. The information network provides a new medium and spatial structure, forming a new relational connection between dance creators, performers and audiences. This relational connection has changed the way dance works are disseminated, expanded the dance audience, and increased the phenomenon of new copyright infringement. As dance and social media become deeply intertwined, courts need to address copyright infringement in dance without more prescriptive guidelines [14]. Creators of dance works need to rely on the dances they create to gain momentum online, but an increasing number of Internet users are copying existing dance choreography and posting their performances to their accounts without tagging the original choreographers. This widespread copying exacerbates the virality of dance infringement. So even though the original choreographer wants to be protected by copyright, widespread infringement occurs before he or she can obtain legal remedies. The traditional ideas of solving the infringement of dance works cannot provide effective guidelines for the infringement of dance works in the online environment. Because the copyright law itself has problems with the definition and protection position of dance works, it cannot provide effective protection for dance works in the new mode of communication.

4. Copyright law's response to the protection of dance works

4.1 The significance of copyright law to protect actions

4.1.1 Movements can embody originality

The essence of copyright protection for dance works is to protect the external manifestation of dancers' interpretation of their inner world, and the specific way of such interpretation is dance language, which should be regarded as the concrete expression of dance works, the process of choreographers' internal thoughts being told to the outside world through their bodies. Only at a certain stage in the course of social development, dance was moved from a chaotic state of non-independent art to a comprehensive art performed in the theater, but this is not about the essence of dance. The original intent of protecting dance is that the law protects the creation of the language of dance by the author of a dance work. The choreographer's interpretation of body movements is the dancer's interpretation of stories and emotions through movements and postures, and this flow of emotions and physical interpretation from the inside out is formally protected by copyright law for the original purpose of realizing the protection of various specific expressions by copyright law in the dance world. Therefore, the dance works in the sense of copyright, corresponding to the dance

works in the dance world, are based on the elements of having ornamental, expressive and originality.

Body movements are referred to in a variety of ways. But according to the aesthetic point of view, movement can be divided into daily life movement and artistic movement, naturally in the dance context, movement can be used as the abbreviation of dance movement. The connotation of dance language is larger than dance movement, and dance movement is only a part of dance language [15]. The dance language is made up of dance movements, dance combinations and dance phrases. It is worth noting that the most basic element in the structural level of dance language is the dance word, and the dance word happens to be the dance movement. Therefore, dance movement constitutes the expression of dance works and is the most basic unit of expression of the works.

In different development stages and various cultural circles, human beings will have the same or similar body meta-language produced, which eventually forms the common movement perception and establishes the movement meaning system [16]. Dance movement is the body language of dance, which can tell stories and reveal emotions to achieve the purpose of expression that the creator of the dance work wants to achieve. Returning to the provisions of the Implementing Regulations for dance works, the understanding of movement in dance studies and the understanding of movement in the Implementing Regulations may appear to be divergent, but unity can be achieved in legal interpretation. Dance movement in choreography, including continuous movement and pause dance posture, corresponding to the "Regulations" is "continuous movement" and posture.

4.1.2 Body language has a symbolic function

Similarly, the answer seems to be found in art symbolism. For Susan Lange, art is a pictogram of emotion, because the representation of emotion in art is based on the formal consistency between the work of art and human emotion, or in other words, the work of art represents human emotion by exemplifying the form of human emotion [17]. Lange divides form into logical and expressive forms, the latter of which can be understood as the notational part of conformity. In dance, Lange uses the dictionary explanation of "expressive movement" (different from "posture" in this paper, which is closer to the meaning of a collection of movements). Once a particular pose is strikingly displayed to someone who is not fully attracted by the actual purpose, the pose becomes a postural form, which, like all expressive forms, assumes a symbolic function [18]. And the dance posture has this expressive nature and also has the role of logical expression, or even both. The so-called expressive nature is a kind of self-expression, so a highly gestural gesture can often be used to indicate emotion or mood. The meaning of logical expression is that in the context of dance, a pose or gesture can be used to refer to a concept or symbol. A work of art both expresses emotion and creates form, a unity of emotion and form [19].

Therefore, a dance protected by copyright law should require that the dance itself has a complex relationship between emotional and physical symbols. The emotional dimension of self-expression and personal emotion should refer to the ideas or content of copyright law, i. e. "the ideas and feelings expressed or performed" as required by the Implementing Regulations of the Copyright Law and the Legislative Interpretation of the Copyright Law. The categories of physical signs, postures and symbols may correspond to the expressions protected by the Copyright Law, and the categories of postures and symbols may correspond to the expressions protected by the Copyright Law. However, such symbols are actually the result of a high degree of conventionality, based on the similarity between objects. Therefore, symbols can be observed, imitated and produced. Therefore, the creation of symbols also has the necessity of copyright law protection under specific circumstances.

4.1.3 The value of copyright protection for poses

The size of the creation space of a single static dance movement directly affects whether the

choreographer has enough material to create the rehearsal. According to the principle of merger, when a certain element cannot provide creation space for the individual expression of other authors, the original expression is also difficult to be protected by copyright law. As mentioned earlier, a single movement that is decorative and serves a symbolic purpose is not a limited creative object for the creator. It can be created according to the change of rhythm, the strength or weakness of strength, or even the combination with other stage elements to be created with unlimited individual expression. Therefore, when a single static dance movement is a decorative movement expressing a theme, it is possible that the combination with other stage elements constitutes the expression of a dance work. For the identification of dance works, regardless of movement or static, and regardless of whether props are held or not. Movement and stillness are the basic forms of expression of dance, and props are auxiliary materials expressed according to the thoughts and feelings expressed in the dance work and the dance form and dance style. The role of props is reflected in the expression of dance works ideology and feelings, such as balloons represent hope, handkerchiefs represent family letters, etc. At this time, props and movements are integrated, and props can be regarded as an extension of the expression of the dance work.

The "single dance movement" in Yang Liping v. YunHaiyao is the "posture" in this article, which constitutes the expression of the dance work. Since the dance movements in Yang Liping's case need to be combined with related stage props and lighting, such as lighting and moon shadows, in order to realize the expression of the theme of "Moonlight Silhouette", the expression of this dance work not only includes single dance movements but also extends to the necessary stage elements, and such stage elements have irreplaceability and necessity. The combination of "three bends" as a routine movement and specific props is very individual and has a prominent effect on the aesthetic expression of the dance work, which is consistent with the role of decorative movements. It is part of the dance work.

4.2 Movement is the most central expression of dance works

4.2.1 The dancer's body constitutes the carrier of dancing language

Different arts have different material carriers, and they each match the corresponding material means to express them. Correspondingly, the material carrier of dance is the dancer's body, and the means of expression of dance is the dancer's body movements. The dancer's performance is completed on the stage to realize the dissemination of the dance work. Since the artistic concept in the choreographer's mind needs to be materialized in the dancer's body and related material means, the job of the dance rehearsal staff is to make this hazy and indefinite artistic image visible according to the choreographer's concept. The dancer is the creative stage expression of the choreographer's artistic concept.

The task of the dance performer is to transform the ideological content of the work into a visible and perceptible dance image with his or her mastery of dance movement, modeling and technique, combined with music and art, etc. The characteristic of dance performance is that the performer is the main body of the performance practice [10], rather than choreographers or rehearsers. Actors personalize their interpretation by understanding the use of their own physical conditions. The better the physical quality of the dancer, the more beautiful the form, and the more skillful the technique, the more vivid and graphic the performance can be. This delicate physical treatment is the original purpose of the protection of neighboring rights, that is, to achieve a wider dissemination of the work. Because the dancer's individual interpretation of the dance work attracts more audience to watch the dance work.

4.2.2 Other expressions may exist in the dance work

In practice, some dances must be performed with props. Returning to Yang Liping's case, in order to highlight the performer's wonderful body posture, a circular background was deliberately used as the set, and the program was named "Moonlight Silhouette", so it can be seen that "moonlight" is a necessary element in the dance performance and cannot be replaced by the display, or even if it is replaced by the display, it is difficult to present the original beauty and mood of the use of the prop, so at this time It is the combination of dancers' movements and props together, in order to complete the complete transmission of ideas and feelings of dance works. Single person single action due to the rhythm, the change of the scene on the whole dance works to produce a huge effect, but also the originality of the dance works embodied.

As for whether the costumes, make-up, lighting and music are completely integrated with the dance, it depends on the specific needs of the expression of the dance work, if the expression of the dance work is necessary with certain specific costumes and make-up, the expression of the dance work should be extended to the costumes and make-up. If the opposite is true, then the boundary of the expression of the dance work at that time is only the dance movement. Otherwise, it is difficult to distinguish dance works from theatrical works, etc. Therefore, the protection of dance works must first be based on the core of dance body language. In other words, the "movements, postures and expressions" stipulated in the Implementing Regulation, as well as the understanding of "etc." in the Implementing Regulation, should be considered dynamically according to the needs of expression in the actual situation of the dance work.

5. Conclusion

The study of the basic meaning of dance works is not only a field of legal research, but also a field of art. A superficial interpretation of the connotation of dance works based on dance performances only raises more questions about the copyright protection of dance works. When copyright law is used as a norm for legal interpretation and legal application, the basic jurisprudence of copyright law is often difficult to be effectively compatible with dance art. This has not only caused the dilemma that dance creators gradually give up protecting their rights and interests through copyright law, but also led to the inability to achieve a balance in the creative ecology of the dance industry. At present, in order to encourage the industrialization of dance and motivate dance creators, the true connotation of dance works under the meaning of copyright law should be reconstructed.

The movement design theory provides a suitable theoretical basis for the definition of the connotation of dance works, and Susan Lange's art symbolism clarifies the essence of dance works. The language of dance constitutes the dance work, and the body becomes the carrier of the dance work. The scope of a dance work should be identified with the design of the dance language, and the definition of the scope should be extended to the dance material in each case. It is the entertaining dance, artistic dance and some fashionable dances that are the real counterparts of dance works under copyright law, and the aforementioned types of dances are not subject to the threshold or protection condition of whether they are fixed or recorded, or whether they are intended for stage performance. Directly expanding the scope of protection of dance works to the scope of dramatic works based on the "comprehensive" characteristics of dance will not only cause overlap in the scope of recognition of the two types of works, but also unduly restrict the conditions for the recognition of dance works. Only in this way can the above-mentioned problems be avoided and the understanding of the essence of dance be returned. Only by clarifying the specific connotation and protection scope of dance works can we make dance art compatible with copyright jurisprudence and realize the effective and long-term protection of dance works by copyright law.

References

- [1] Su San. *Langer: Emotion and Form*. Translated by Liu Daji, China Social Science Press, 1st edition, 1986: 193.
- [2] Yang Liping (Yunnan). *Information Technology Development Co. , Ltd. v. Xinzheng Yicheng (Beijing) Catering Management Co. , Ltd. et al. Copyright Infringement and Unfair Competition Dispute Case, Beijing Haidian District People's Court, Jing 0108 Minchu No. 32020 Civil Judgment, 2018.*
- [3] Mitchell Gabriel. *Who controls the dance: copyright in the world of choreography*, *AIPLA Quarterly*, 2018, 46: 381-412.
- [4] Chengshi Zheng. *Copyright Law (above)*, *Social Science Literature Press*, 2016.
- [5] Shen Yang. *An Analysis of the Journey of Ballet Evolution*. In *Art 100*, No. 3, 2003: 74-77.
- [6] John Georges Neuville. *Letters on Dance and Dance Theatre*, translated by Guan Zhenhu and Li Xusen. *Shanghai Literature and Art Publishing House*, 1982 edition.
- [7] Xu Kangping, Leng Rongzhi, et al. *The Legal Protection of Copyright for Dramatic and Dance Works*. *Xueyuan Publishing House*, 2019 edition.
- [8] Wang Qian. *A Course in Intellectual Property Law*. *People's University of China Press*, 2021.
- [9] Beijing Xinzheng, Yicheng Catering Management Co. , Ltd. and Yunnan Yang Liping Information Technology Development Co. , Ltd. *2nd Trial, Jing 73 Min Final 2161, 2022.*
- [10] Lv Yisheng and Mao Cui. *Fundamentals of Dance*, *Shanghai Music Publishing House*, 2013: 32.
- [11] Zhou Xian. *The Cultural Logic of Art Theory*, *Beijing University Press*, 2018: 226.
- [12] Edited by the Editorial Committee of *Artology: Art Discipline: Reading and Construction*, *Xue Lin Publishing House*, 2006: 264.
- [13] Li Guifang. *The Space of Force and Beauty - A Discourse on the Aesthetics of Dance*", in *Inner Mongolia Social Science*, No. 2, 1999: 64-69.
- [14] Isaacson. Laura, *Choreography copyrights for moves published on social media et al. Los Angeles Lawyer*, 2021, 44: 14-17.
- [15] Long Yinpei, Xu Erchong. *Introduction to Dance Art*, *Shanghai Music Publishing House*, 1997: 311.
- [16] Liu Jian. *A Collage of "Introduction to Dance, Nation Press*, 2010: 22.
- [17] Huang Yingquan. *Susan Lange's Modern Imitation: Art as a Pictorial Symbol of Human Emotion*", in *Journal of Capital Normal University. Social Science Edition*, 2018, 5: 101-110.
- [18] Su San. *Lange: Emotion and Emotion. Langer: "Emotion and Form"*. Translated by Liu Daji, *China Social Science Press*, 1986: 204.
- [19] Huang Yingquan. *Susan Lange's Modern Imitation: Art as a Pictorial Symbol of Human Emotion*, In *Journal of Capital Normal University, Social Science Edition*, 2018, 5: 101-110.