

# Legal Analysis of the Copyright Protection of Applied Art Works

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**Abstract:** Applied art works have both artistry and practicability, its protection should be different from the general sense of art works. For works of applied art in the sense of copyright law, artistic expression and practical effect should be separable, and copyright law only protects original artistic expression. For the physically separable works of applied art, their originality should be equal to the works of art; for the conceptually separable works of applied art, the aesthetic factors should be determined by ordinary consumers, and the aesthetic function should be stronger than the practical function and higher than the artistic quality of the general works of art.

For a long time, due to the natural closeness of applied art works and industrial design, the copyright law does not take it as an independent protection object, which is often used as a subordinate concept of art works in the process of judicial practice. From the perspective of legislative evolution, it has its historical origin and practical consideration that applied art works are not included in copyright protection. First of all, there is no significant distinction between works of applied art and works of art with three-dimensional modeling; Secondly, works of applied art are mostly related to industrial production, mostly protected by the appearance design, and limited to the protection period of copyright law, which is not conducive to large-scale production; Thirdly, it is difficult to distinguish works of applied art and handicrafts, most of the handicrafts bear the national characteristics of history and culture, copyright protection will affect its promotion and application.

So, furniture and other applied art works with both practical and artistic functions are copyrightable? How to determine the composition of works in the sense of copyright law? On the basis of relevant legislative practice, this paper will analyze and answer above questions.

## 1. The legitimacy of the protection of the copyright law of applied art works

With the development of science and technology, the development and spread of many arts are no longer confined to the plane form, but appear in people's vision in traditional forms, such as sculpture and pattern. Most art creation began to combine industrial products such as furniture, making it both artistic and practical. In this context, the copyright protection of practical works of art will be given an indispensable importance.

### 1.1 The legislative trend of copyright protection of applied art works

From the perspective of the legislative evolution of international conventions, the Berne Convention has included applied art works in the scope of literary works; its use guidelines clearly include furniture, clothing, etc. into the scope of practical works of art; the World copyright convention stipulates that applied art works can be protected as works of art; the GATT Agreement on Trade-related Aspects of Intellectual Property Rights follows the protection of works in the field of literature and science and technology by the copyright convention, and covers the provisions on practical works of art.

From the perspective of legislative protection of foreign countries, the United States protects applied art works as art works; France distinguishes works of art into applied works of art and pure works of art based on whether they have practical functions or not; Japan emphasizes the value of

art appreciation in the protection of art works; Russia puts the applied art works into the protection category of art works, and requires it to have a certain artistic height. Although there are different legislative standards, most countries tend to protect works of applied art by copyright law.

## **1.2 The inexorability of the protection of art works**

From the point of view of legislative purpose, copyright law grants a certain right to encourage innovation and balance of interests. Applied art works are limited by their own performance requirements, in order to meet the development needs of a faster update speed. If it is included in the protection of art works, the long term of protection will not be conducive to the practical art works entering the public domain as soon as possible and mass production.

In terms of the protection scope of the two, the original of the art works embodies the individual thoughts and unique artistic techniques of the creator, and has the value of aesthetic appreciation and collection, while the copy of the art works is often used as a commercial promotion in the general sense of dissemination and preservation, which does not have the outstanding literary value and collection value. The appearance design of applied art works is mainly to attract consumers to achieve commercial purposes. The industrial chain development mode of "valuing rare things" makes the original copy not quite different from the copy, so there is no value of collection and appreciation.

From the perspective of the division of intellectual property system, applied art works are industrialized and large-scale production to meet people's daily needs. From this point of view, practical art works belong to the industrial and commercial field of industrial property adjustment. From the perspective of the composition of rights, literary property rights and industrial property rights should be either or binary relationship. Applied art works have both the object characteristics of their protection and should have unique characteristics.

## **2. The judgment of originality of applied art works**

To judge whether an object belongs to a practical work of art, not only its practical function but also its artistic quality should be considered. The practical function can meet people's daily production needs. Artistic quality refers to aesthetic value or personalized expression. In this regard, the British put forward the standards of intellectual creation and daily concept. The former came from Burke case. The judge thought that the artistic quality of the clothes involved in the case came from the sketch. The employees who made the clothes only made them according to the process mechanically and could not get the protection of copyright law. This is similar to the one-piece production advocated by Japan, that is, the mass-produced products can not get the same protection as the general handicraft products. The latter came from *Hensher v Restawile* case. The court held that the novel appearance design of sofa was for the commercial purpose of realizing the sales profit, but the artistry was to emphasize the personalized expression. The United States puts forward the standard of art history and daily concept, that is, judging artistry from the perspective of history and daily life. However, due to the lag of history and the conservatism of public concept, over novel art creation may not be understood by the public. In fact, the overlapping of judgment criteria reduces the possibility of copyright protection of applied art works.

There is no judgment standard of originality in China's legislation, which has been discussed extensively in the academic circles. Generally speaking, there are three opinions: (1) the originality of applied art works should be higher than that of art works; (2) the originality of applied art works should be appropriate to the requirements of art works; (3) the practicability of applied art works limits the development of art creation, and the originality should be lower than works of art. In the process of judicial practice, there are many differences in the judgment of originality. In *Honeywell* international case, the court held that a work of applied art should have a higher artistic beauty than a general work of art in order to be protected by copyright law. In the case of *Tian Shi* packaging design, the court held that in the design process, the plaintiff carried out creative labor such as selection of common design elements, which was quite original with art works and should be protected by copyright law. In the *LEGO* case, the court held that from the perspective of the design

of toy blocks, the cross shape of holes is a conventional design, and the circular structure is designed to realize the splicing function, which does not have the originality equivalent to the art works.

To sum up, there are many standards for the originality judgment of applied art works in the field of management theory, but in terms of the applicable induction in the process of judicial practice, the mainstream view is that the copyright protection of applied art works should have the same originality as that of art works. In view of this, the author believes that when the artistry and functionality of an applied art work can be separated physically, its artistry is equivalent to an independent individual, at this time, the originality requirements of it should be equivalent to an aesthetic work; when the artistry and functionality of an applied art work are difficult to be separated, its originality requirements should be higher than an art work.

### **3. The judgment of the separability of applied art works**

For patterns that are independent of practical products, such as art patterns on tableware or cartoon images on toys, they can be easily separated from practical products, as long as they meet the requirements of copyright for originality of general works. The controversial problems in practice are mainly reflected in the applied art works that are not easy to make artistic and functional separation, such as the three-dimensional modeling of furniture, clothing design, etc. the functional and artistic characteristics of the above types of applied art products are often closely combined, so it will be very difficult to separate them completely.

As a frontier country of property rights protection, the United States has made a detailed discussion on the separability standard, and has been improving in the long process of judicial practice. The separability standard in American copyright law includes physical separability and conceptual separability. The former requires that the artistic level of the object can be completely distinguished from the practical level, that is, after removing its functional features, the artistic features and aesthetic elements will not be impaired; the latter only requires that the artistic features can be distinguished from the functional features in theory. To judge whether a practical work of art has conceptual separability, there are many criteria. Such as primary / secondary criteria, based on the aesthetic value of the public, this paper compares the artistry and practicability of the goods, so as to realize the separation of the two from the concept. However, as a social concept, aesthetic value has a great subjective color, how to accurately measure aesthetic elements remains to be clarified; the saleable standard, if an article may be accepted and purchased by people after losing its practical value, can be considered as having artistic value and can exist independently of its practical value; the temporary replacement standard, if ordinary consumers can temporarily only consider its aesthetic function of an applied art work with practical function, can be considered that its artistry can be separated from functionality.

In the process of practice, China has formed two kinds of judgment standards, one is complete separation standard, the other is comparative separation standard. The former refers to the complete separation of artistry and functional in physics or concepts. In the J-10 aircraft model case, the court held that the modeling design of the aircraft is to maximize the performance of the aircraft, and that the modeling component is integrated with the aircraft function, which is not separable. The latter refers to the comparison of the practicality and artistry of objects, to protect the copyright of artistic expression that has certain aesthetic value and is not limited to functional characteristics. In the case of Huang BingDeng's wedding dress, the trial court held that the wedding dress involved in the case has a personalized aesthetic feeling in dress modeling, and has a high aesthetic value and artistic appreciation in addition to practical functions, so it should be protected by copyright law.

To sum up, foreign countries, such as the United States, have different emphases on many judgment standards explored in judicial practice, they have positive significance and there are some biases. In view of this, in order to explore the separability judgment standard suitable for our country, we should base on the general principle of copyright law protection, adhere to the mode of dichotomy of thought expression, combine the principle of interest balance and innovation incentive, to establish the objective and reasonable judgment standard.

## **4. The perfection of copyright protection system of applied art works**

### **4.1 Applied art works at least need to meet the general requirements of copyright law on the originality of works**

Applied art works that can be physically separated from artistry and practicality, their individual expression is independent of functional features, their originality can be protected by copyright law only if it is equivalent to the works of art. The aesthetic value of applied art works that are difficult to separate artistry and practicability should be higher than that of general works of art.

First of all, the opposition between art and industry determines a higher standard of originality. The high artistic expression and novel design of applied art works are all for the purpose of commercial sales. On the basis of the protection of the design by the patent law, the artistry of practical art works is equivalent to that of art works, which will cause the expansion of the protected objects in the sense of copyright law. Secondly, the commodity attribute of applied art works determines a higher standard of originality. Because of the scarcity of artworks, as well as the personalized expression and artistic characteristics, the public is willing to pay a high price to collect and appreciate artworks. And applied art works often mean mass production. On this basis, only with high aesthetic value, can they be accepted by the public. Here we can learn from the "saleable standard" of the United State, only when the design and production reach a certain height, the public will consider the aesthetic value of practical art works to make a higher level of consumption.

### **4.2 The aesthetic function of applied art works should be obviously stronger than practical function**

For applied art works that can be separated physically, there is no need to repeat. For those are mixed with functional design and artistic design, it is necessary to distinguish the role of the two, and exclude works that have certain aesthetic factors but are limited by functional features.

In terms of specific system design, from the perspective of judgment object, the object protected by copyright law should be the expression form of ideas, on the forms of expression of aesthetic value and functional characteristics of applied art works, rather than the creative intention in the design process. From the perspective of judging subject, aesthetic value and artistic quality should be considered by ordinary consumers. The aesthetic value has a strong subjective color. Although ordinary consumers may be influenced by the history and culture or the trend of the times, the acceptance of applied art works with great artistic value is not high, but the design of applied art works is to serve the general public at the beginning, so its creation should consider the acceptance of general public. In terms of judging steps, consumers should be able to realize that it has certain aesthetic factors and still has practical functions on the basis of separating its aesthetic value. At this time, it should be considered that the work can obtain the protection of copyright law.

### **4.3 Avoid improper monopoly of product design**

Applied art works are generally used in large-scale industrial production. In addition to copyright protection, attention should be paid to the impact on the public interest, so as to avoid excessive protection and improper occupation of the business space of other market subjects. This is mainly due to the consideration of different object protection periods in patent law and copyright law. Because of its practical function, applied art work is closely related to the daily life of the public. When it is put into the market, its renewal and circulation speed is fast, and the producer can get compensation and recover the cost in a short time.

However, the artistic expression of applied art works is limited by its practical function, and the design space is small. When protecting the copyright of practical art works, the design space should be considered. First of all, we should adopt relatively strict examination standards and moderately raise the entry threshold, such as high artistic quality and strong aesthetic function, to prevent monopoly of personalized expression; Secondly, as far as the protection period is concerned, according to the relevant legislation of our country and the provisions of international conventions,

it should not exceed 25 years from the date of applying for the protection of the design. Finally, for the licensee of the original patent license contract who still carries out copyright protection after the expiration of design protection, in order to maintain the security of commercial transactions, it should be allowed to manufacture within the scope of the original license.

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