

PROCEEDINGS ARTICLE

Logical Exploration of the Intellectual Property Protection of the Intangible Cultural Heritage of "Tibetan Opera"

Jing An^{1,*}, Yan Chun¹¹ Sichuan Minzu College, Kangding, China

ABSTRACT

The intangible cultural heritage of "Tibetan opera" is an important part of China's excellent traditional culture. It is of great significance to protect, inherit and carry forward the intangible cultural heritage of "Tibetan opera", to continue the historical context and strengthen cultural confidence. As for the intellectual property protection of the intangible cultural heritage of "Tibetan opera", it is necessary to focus on the copyright protection of intellectual property rights. Copyright protection is divided into the protection of personal rights and the protection of copyright property rights. Therefore, by constructing a copyright protection model, supplemented by a comprehensive protection model, the protection of the intangible cultural heritage of "Tibetan opera" can be finally realized, in order to achieve the protection of Chinese cultural diversity.

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1. INTRODUCTION

The intangible cultural heritage "Tibetan Opera" is the melting pot of Tibetan cultural diversity and the guarantee of Tibetan sustainable development. Cultural diversity is the source of cultural exchange, innovation and creation. It is not only a factor to promote economic growth, but also a means of satisfying intellectual, emotional and moral spiritual life. Cultural globalization has brought serious challenges to cultural diversity. On the one hand, globalization is at the center of modern culture, and the result is cultural homogenization. On the other hand, the homogenization of culture will have a negative impact on the cultural rights of vulnerable groups such as ethnic minorities, local residents and immigrants. It can be seen that in the challenge of cultural globalization to cultural diversity, there is a necessity to pay attention to the protection of ethnic minority culture, and strengthen the protection of the diversity of Tibetan traditional culture in the process of ethnic minority cultural protection. The protection of the intangible cultural heritage "Tibetan opera" in Tibetan areas is a necessary link to preserve the diversity of Tibetan culture. It is quite necessary to

formulate special regulations to protect works of folk literature and art [1].

2. EXPRESSIONS AND INTELLECTUAL PROPERTY PROTECTION OF TIBETAN TRADITIONAL CULTURE

The expression form of traditional culture, also known as folk literature and art expression (TCES/EOF), is an important type of intangible cultural heritage. Some scholars believe that the protection of traditional cultural expressions is inseparable from the intellectual property system, and there are conflicts at the same time. To sum up, the protection of Tibetan traditional cultural expressions mainly includes the following appeals: the first is to protect Tibetan traditional literary and artistic products and handicrafts, and prevent unauthorized reproduction, adaptation, distribution, performance and other similar acts. The second is to prevent insulting, derogatory and offensive use in spirit. The third is to prevent false and misleading statements or non-recognition of its source and authenticity. The fourth is to prevent the use of traditional marks and symbols

*Corresponding author. Email: anjing@kdntc.edu.cn

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as registered trademarks without the consent of local communities and indigenous Tibetans.

According to the "Wuhan Declaration on the Protection of Intangible Cultural Heritage and Intellectual Property Rights", "The intellectual property system plays an important role in the protection of intangible cultural heritage, but the protection of intangible cultural heritage also poses a huge challenge to the current intellectual property system." Therefore, countries should protect intangible cultural heritage by improving relevant legal systems such as intellectual property rights, and take effective measures in terms of capital investment, technical means, social publicity and personnel training to establish a sound intangible cultural heritage protection system. The protection of intellectual property law should be at the core of the most subjective and fundamental position among the legal means to protect intangible cultural heritage such as "Tibetan opera" [2]. The intangible cultural heritage of "Tibetan opera" is the practice of spirit, the accumulation of experience, the improvement of skills and the display of art. In the final analysis, it is the result of intellectual creation. The object of intellectual property is the spiritual product created by people in the fields of science, technology, culture and other forms of knowledge [3]. "At the beginning of the establishment of the Intellectual Property Law, the purpose was to protect people's intellectual and business achievements conditionally and within a certain period of time, in order to stimulate the innovation mechanism of society and promote the progress of science and technology and the development of society" [4].

3. COPYRIGHT PROTECTION MODE OF THE INTANGIBLE CULTURAL HERITAGE OF "TIBETAN OPERA"

There are two modes of legislation for the protection of Tibetan traditional culture: one is protected by copyright law, and the other is protected by special legislation. Which mode is more appropriate deserves further study. In terms of the corresponding legal relationship structure, including the definition of licensor, the scope of rights, the limitation of rights of recorders, i.e., copycats, and holders of folk literature and art, all need further study and discussion [5].

3.1. Personal Rights and Copyright Property Rights of "Tibetan Opera"

Copyright includes two aspects: personal rights of copyright and property rights of copyright. The

former includes the right of publication, the right of authorship, the right of revision, and the right to protect the integrity of the work. The latter includes the right of reproduction, performance, broadcasting, exhibition, distribution, screening and production, translation, annotation and arrangement, and editing. The intangible cultural heritage of "Tibetan opera" is different from the protection objects of the current intellectual property rights in many aspects. However, when defining the content of copyright protection rights of intangible cultural heritage of "Tibetan opera", the personal rights of the copyright should undoubtedly be included. Relevant provisions of the "Model Law on Protection of Folk Literature and Art Expressions from Abuse of Domestic Legislation" on the personal rights of authors: In all printed publications disseminated to the public, the provenance of all expressions of folk literature with clear sources should be indicated in an appropriate way, that is, the residential groups or geographical locations from which the relevant expressions are used can be regarded as provisions on the right of authorship. In terms of copyright property rights, many countries that have laws to protect intangible cultural heritage works of "Tibetan opera" have granted the subject of rights "the right of reproduction", "the right of translation" and the corresponding "right of dissemination". However, there are different opinions on whether to grant the right to adapt the intangible cultural heritage of "Tibetan opera". The granting of the right to adapt the intangible cultural heritage of "Tibetan opera" should pay attention to the division between the adapted works and the intangible cultural heritage of "Tibetan opera" itself, otherwise it will affect the development and dissemination of the intangible cultural heritage of "Tibetan opera". When determining whether a work is an intangible cultural heritage itself or an adaptation of a work, is mainly to determine whether the work is original, independent and distinct from the intangible cultural heritage of "Tibetan opera".

3.2. Copyright Protection Mode and Comprehensive Protection Mode

The copyright protection mode pays attention to the static protection of the intangible cultural heritage of "Tibetan opera". It archives and preserves the intangible cultural heritage of "Tibetan opera" by means of collection, recording, classification, cataloguing, and other means such as text, audio recording, video recording, and digital multimedia, and protects it with the relevant copyright system. On the one hand, it can encourage the birthplace and inheritors of intangible cultural heritage such as "Tibetan opera" to protect intangible cultural heritage

such as folk literature and art works, and promote the continuous development of intangible cultural heritage. On the other hand, the copyright protection model can promote the general survey of intangible cultural heritage such as "Tibetan opera", and determine that it will be preserved in the form of pictures, text, audio and video. It will record the development of history in the original way, preserve the excellent achievements of human intelligence, and avoid cutting the link between past and present due to development of the times. Copyright protects intangible cultural heritage such as "Tibetan opera", determines the rights of the birthplace and inheritors, and promotes the reasonable dissemination and promotion of intangible cultural heritage such as "Tibetan opera", thus promoting its continuous development. However, due to the inherent characteristics of intangible cultural heritage such as "Tibetan opera", there are still certain conflicts with the current copyright protection system. On the one hand, the protection period is limited. However, intangible cultural heritage such as "Tibetan opera" has a long history and needs permanent protection. The other is originality. According to the "Copyright Law", a work must be created by the author himself. However, intangible cultural heritage such as "Tibetan opera" is the crystallization of collective wisdom and the result of the spread of times. Therefore, it is difficult to meet the requirements of copyright protection. It can be seen that copyright protection of intangible cultural heritage such as "Tibetan opera" cannot achieve complete protection. Therefore, in the protection of intangible cultural heritage such as "Tibetan opera", there is a necessity of comprehensive protection methods.

3.3. Perfection of the Copyright Protection System of "Tibetan Opera"

3.3.1. Subject of Rights

Social groups, in general, intangible cultural heritage such as "Tibetan opera" is first created by individuals, and then gradually processed in circulation. Its spreading process is also a creative process. In the long spreading process, it will more or less integrate the beliefs, tastes and emotional tendencies of specific groups, so that intangible cultural heritage such as "Tibetan opera" has obvious national characteristics and becomes the external symbol of the group. Therefore, these groups should enjoy copyright and related rights and interests. For the identification of this "group", it is necessary to start from the growth environment of "Tibetan opera" and other intangible cultural heritage, and take the principle of the closest connection, so it is difficult to determine the main

body of the area with the same or similar cultural characteristics, and it is inconvenient to classify the "Tibetan opera" and other intangible cultural heritage into a certain category of people. Because a large range of trans-regional groups are regarded as the subject of rights of intangible cultural heritage such as "Tibetan opera", which is specifically implemented in various associations. If there is no fixed organization to exercise rights, the cultural department will be the subject of rights, and the organization will exercise rights after determining the specific organization.

Intangible cultural heritage such as "Tibetan opera" is regional and inheritable. If intangible cultural heritage such as "Tibetan opera" belongs to a certain group, it is easy to cause disputes among ethnic groups, which is not conducive to national unity. At this time, the state, as the subject of rights, is easy to solve this dilemma. In addition, from the perspective of legal rights protection, the protection of intangible cultural heritage such as "Tibetan opera" passed down by the whole nation by the state as the main body is more powerful. However, the state is a virtual subject, and the cultural authorities of the central government can exercise their rights as obligees.

Inheritors can also be the subject of rights. Because the extinction of intangible cultural heritage such as "Tibetan opera" will become inevitable without the continued existence of inheritors, so inheritors play a vital role in the inheritance of intangible cultural heritage such as "Tibetan opera". At the same time, the inheritors have paid original labor in the process of inheritance, and their interests must be given reasonable consideration in the inheritance and development of intangible cultural heritage such as "Tibetan opera", in order to meet the legal principles of fairness and justice.

According to the provisions of the "Copyright Law", the copyright belongs to the author. Intangible cultural heritage such as "Tibetan opera" is collective and is the overall wealth of the birthplace and nation. Therefore, it determines that the author of the copyright of intangible cultural heritage such as "Tibetan opera" is all the people of the birthplace, and it also shows that the exercise of rights is not easy to operate. As for who is qualified to exercise rights on behalf of the place of origin, the most common practice in various countries is to authorize a governmental organization with management responsibilities or designate a non-governmental organization or group to claim rights on behalf of the place of origin of intangible cultural heritage in the form of legal norms. Article 3 of the 1982 Model Law on the Protection of Folk Literature and Art Expressions from Abuse of Domestic Legislation stipulates that the use of folk literature and art shall

be authorized by the "competent authority", but there is no specific provision for the "competent authority", which gives countries the freedom of choice. Tunisia stipulated in the 1966 "Law on the Property Rights of Literature and Art" that folk art is part of its national heritage. Except for those national organizations representing the public interest, anyone who uses it for profit must obtain the authorization of the Ministry of Culture and Tourism. The transfer, in whole or in part, of the copyright of works inspired by folk literature and art or the exclusive authorization to use such works requires the permission of the Ministry of Culture and Tourism. At present, China has no clear legal provisions on the subject of intangible cultural heritage such as "Tibetan opera". But in practice, it is actively exploring and determining the subject of rights and the exercising authority.

Intangible cultural heritage such as "Tibetan opera" is the common interest of the people of the birthplace, and its right subject is of course the local ethnic groups and people. No matter the township government or the copyright administration department is just the messenger of the copyright of the birthplace of intangible cultural heritage such as "Tibetan opera", and the relevant rights of intangible cultural heritage such as "Tibetan opera" should ultimately belong to the people of the origin of the heritage. According to the provisions of the Measures for the Administration of Cultural Stations in China, cultural stations are the most grass-roots cultural institutions in the country, as well as cultural institutions owned by the whole people set up by township people's governments and urban street offices. One of the tasks of the cultural station is to collect and sort out the national folk cultural and artistic heritage and do a good job in the publicity and protection of cultural relics. At present, the issued "Regulations on the Protection of Intangible Cultural Heritage" has made it clear that the cultural administrative department of the people's government at or above the county level is the local "Tibetan opera" and other intangible cultural heritage management agencies, responsible for the protection of intangible cultural heritage. As an envoy of the copyright of intangible cultural heritage such as "Tibetan opera", the cultural station is conducive to the understanding, collection and preservation of intangible cultural heritage such as "Tibetan opera", and is conducive to the formation of relevant works, and better use of copyright to protect intangible cultural heritage such as "Tibetan opera".

3.3.2. Content of Rights

According to the general theory of copyright, copyright includes two aspects: personal rights and

property rights of copyright. The former includes the right of publication, the right of authorship, the right of revision, and the right to protect the integrity of the work. The latter includes the right of reproduction, performance, broadcasting, exhibition, distribution, screening and production, translation, annotation and arrangement, and editing. Compared with the protected objects of copyright, the material cultural heritage has certain differences from literary and artistic works. However, personal rights and property rights of a copyright should undoubtedly be the content of its rights. Personal rights of copyright have been determined by relevant laws and applied in practice. The "Model Law on the Protection of Folk Literature and Artistic Expressions From Abuse of Domestic Legislation" stipulates that in all printed publications disseminated to the public, provenance of all forms of folk literature expression with clear sources should be indicated in an appropriate way, that is, the residential group or geographical location from which the relevant expressions are used.

In terms of copyright property rights, many countries that have laws to protect intangible cultural heritage works such as "Tibetan opera" have granted the subject the right to copy, to translate and the corresponding right to spread. Due to the misunderstanding that intangible cultural heritage such as "Tibetan opera" belongs to the "public domain", the creators do not need to obtain anyone's consent or pay any remuneration when performing their interpretation. It is very easy to regard their interpretation as completely independent creation and take it for granted that they have complete rights. The grant of the right of adaptation can remind the creators to respect the intangible cultural heritage such as "Tibetan opera" and prevent others from arbitrarily adapting and distorting it. Attention should be paid to the distinction between the adaptation works and the intangible cultural heritage such as "Tibetan opera", as well as the problems of collectors and arrangers of intangible cultural heritage such as "Tibetan opera". Most intangible cultural heritage such as "Tibetan opera" are scattered in remote areas, so the process of fixing them to form a complete version through recording and sorting is long, arduous, and has considerable costs, especially for those intangible cultural heritage such as "Tibetan opera" that are on the verge of extinction. Therefore, the exploration work of the recorders and organizers is very important. In order to maintain the original appearance of intangible cultural heritage such as "Tibetan opera", the collation and recording of the collation personnel will not join their own creation, so they cannot meet the original requirements of copyright and cannot be protected by the copyright law. Therefore, the collation and recording personnel

do not enjoy the copyright of the intangible cultural heritage such as "Tibetan opera" that they collate and record. However, they should have the right to indicate the names of the organizers and recorders and obtain corresponding remuneration. At present, the "Regulations on the Protection of Intangible Cultural Heritage in Ningxia" has relevant provisions on remuneration. It is necessary to clarify the content of intangible cultural heritage rights. The beneficial right of regional groups to use intangible cultural heritage should be clarified. Since it can be recognized that the formation and development of intangible cultural heritage such as "Tibetan opera" is the result of the continuous creation of a certain ethnic group or a certain regional group, it is necessary to give the identified rights subject the legal right to use and allow them to obtain economic benefits from it. It should be emphasized that the economic benefits obtained through these channels should be partly used for the protection and inheritance of intangible cultural heritage such as "Tibetan opera" to ensure its vigorous vitality. However, it should also be made clear that intangible cultural heritage rights such as "Tibetan opera" do not include the right to transfer. Only in this way can the trade secrets of intangible cultural heritage such as "Tibetan opera" not be disclosed, national cultural interests not be lost, and the intellectual property rights of intangible cultural heritage such as "Tibetan opera", interests of ethnic groups and the national interests be coordinated.

3.3.3. Neighboring Rights

According to the provisions of China's "Copyright Law", include the rights of publishers, performers, producers of audio and video recordings, and broadcasting organizations. The "Convention on Performers and Phonograms", the first convention on the protection of the right of adjacency concluded in 1961, provides for the scope of performers to allow States parties to "extend the protection provided by this Convention to artists who are not performing literary or artistic works in accordance with domestic laws and regulations". The "International Convention for the Protection of Performers, Recorders and Broadcasting Organizations" (WPPT) of the World Intellectual Property Organization also extends the interpretation of performers to those who perform a certain form of folk art. According to the provisions of China's "Copyright Law", performers refer to actors, performing units or other persons who perform literary and artistic works. It can be seen that legal persons or other organizations can also become performers. Therefore, the collective rights subject of intangible cultural heritage such as "Tibetan opera" can also be protected as performers, which can

promote the overall interests of intangible cultural heritage such as "Tibetan opera". Through the protection of neighboring rights, on the one hand, it can guarantee the characteristics of intangible cultural heritage such as "Tibetan opera" and prevent others from distorting and damaging it. On the other hand, in practice, some people obtain economic benefits by recording folk music and forming audio and video works, while the people who originally created and sang this folk music did not get any benefits. Neighboring rights can solve this problem and protect the interests of the birthplace.

4. CONCLUSION

With the development of society, the commercial development opportunities of intangible cultural heritage such as "Tibetan opera" are gradually increasing. However, most of the developers are developed countries and regions. Based on intangible cultural heritage such as "Tibetan opera", they develop technologies and products to form various industrial development. Based on the information attribute of intangible cultural heritage such as "Tibetan opera", once the development of the achievements is successful, the birthplace may be substantially separated from the developer. The developer only enjoys the information and interests of the industry, owns the intellectual property rights of intangible cultural heritage such as "Tibetan opera", and takes possession of the intangible cultural heritage such as "Tibetan opera" in disguised form and forever under the state of fact, but makes the inheritor and the origin paces fundamentally lost control over the use of the heritage. Developed regions or countries have a better intellectual property system, effective management experience and sufficient funds, and have established numerous commercial operation models for the development of intangible cultural heritage such as "Tibetan opera", which has led the commercial development of cultural heritage. In this case, it will inevitably infringe the interests of the birthplace. But at the same time, any birthplace should also be clear: from the perspective of development, it is unwise to deliberately prevent developers from using intangible cultural heritage such as "Tibetan opera". Narrow emotional actions inevitably reduce the possibility of obtaining greater benefits from the use of intangible cultural heritage resources such as "Tibetan opera", and even cause the waste of resources and information of the whole society. Therefore, in the commercial development of intangible cultural heritage such as "Tibetan opera", it is the best choice to pursue the legitimate right to benefit sharing on the basis of equality. The benefit

sharing mechanism has been widely used in the commercial development of genetic resources. Based on the information commonality of intangible cultural heritage such as "Tibetan Opera" and genetic resources, the benefit sharing mechanism can also be applied to intangible cultural heritage such as "Tibetan opera". Specific ways to share the benefits of intangible cultural heritage such as "Tibetan opera" include cooperative development, joint venture development, investment in the place of origin, free or low-cost access to intangible cultural heritage development achievements such as "Tibetan opera", and royalty compensation [6].

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