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The Idea Replacement and System Improvement of Copyright Law

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Abstract. Copyright law is not only a law of rights but also a law of cultural development, which not only guarantees copyright but also constructs a cultural innovation system. The copyright law has the attribute of social law. From the beginning, it is necessary to build a balance mechanism between the copyright owner and the public. We must redefine the concept of public domain reservation, change the preferential protection of copyright owners, and build a balanced interest game mechanism by absorbing the effective participation of the public in the legislative process.

Keywords. natural rights theory; Social attributes; Public domain reservation; Legal interest balance mechanism

Since the 21st century, due to the significant changes in technological development and interest pattern, there have been profound differences between interest groups and the public around the creation, dissemination and use of works. The basic concept of copyright law and its institutional construction have to face new opportunities and challenges.

1、 The Theory of Natural Rights and Its Practical Predicament

The theory of natural rights and its influence on current legislation

As far as the basic idea is concerned, the natural rights theory and utilitarianism theory have a profound impact on the copyright law, but they have obvious differences on the value orientation and legislative purpose of the copyright law. From the perspective of the development history of copyright law in various countries, although the author's right system in continental law system countries and the copyright system in Anglo American law system countries both came into being on the eve of the 18th century, based on different social traditions and development paths, they respectively adopted the natural rights theory and utilitarianism theory as the basis of legitimacy or legal philosophy.^[1] In comparison, the natural rights theory takes copyright and copyright owner protection as the value core, while the utilitarian theory takes the maximization of the social benefits associated with the creation, dissemination and utilization of works as the ultimate goal. In summary, whether to protect private rights or promote social progress is the legislative purpose of copyright law.

Natural rights theory and copyright legislation in China. The current copyright legislation in China has left a clear mark because of the influence of natural rights theory. In the Meiji Restoration period, Japan introduced the author's right system from Germany, France and other civil law countries, and China's first modern copyright law, the Qing Dynasty Copyright Law of 1910, was drafted based on the Japanese Copyright Law of 1899 and the German Copyright Law. Later, the Copyright Law issued by the Beiyang Government in 1915 and the Copyright Law issued by the Nanjing Government in 1928 were all based on the Copyright Law of the Qing Dynasty in 1910 without substantial changes. Based on the origin of the continental legal system and the tradition of legal system, the current 1991 Copyright Law of China emphasizes the author's personality right and its core position in the copyright law. In terms of system and system construction, the author's personal right dominates the copyright law, obviously taking the author's right system as the basic legislative idea.^[2] Even when the Copyright Law was revised for the third time in 2020, it still followed the author's right system originated in the 19th century to build the copyright property system by referring to the property rights in the Property Law, and designed the legal text system according to the object, subject, content of copyright, and the restrictions, utilization, access, and infringement of copyright. To sum up, China's current copyright law is deeply influenced by the theory of natural rights, and it is the fundamental starting point to analyze the gains and losses of China's copyright law legislation to build a legal system and specific system according to the traditional author's right system.

2. Realistic predicament

The theory of natural rights emphasizes the protection of authors' rights, which is a kind of static thinking and right thinking from the perspective of legal texts and legal implementation effects. Under the constraint of the natural rights theory, the practical efforts to add general clauses of copyright restriction in the newly amended laws of various countries have generally failed. It is generally believed that the addition of general provisions on copyright restrictions in the copyright law can, to a certain extent, ease the interest disputes between copyright owners and the public through legal interpretation and judicial application, so as to achieve the progress with the times and substantive fairness of the copyright law. As far as China's current copyright legislation is concerned, not only has the exhaustive enumeration provisions been adopted in terms of rights limitation, but also the theorists have a major dispute over whether to adopt general clauses in terms of rights limitation, which directly leads to the failure of the third revision of the Copyright Law in 2020 to add general clauses for rights limitation! Although Article 24 stipulates that the work can be used without the permission of the obligee under other circumstances stipulated by laws and administrative regulations, it fails to directly stipulate the general terms of restriction of rights in this revision. Considering the tradition of the author's right system, academic disputes and industrial boycotts, we expect to limit copyright and its exercise through laws and administrative regulations, which is obviously not feasible in the short term. Coincidentally, the practical attempt to add a general clause on copyright restriction also occurred in the revision of Japan's copyright law in 2021. As for whether to add a general clause on copyright restriction, there is also a major difference between the intellectual property strategy headquarters and the industry, and it has failed.

As a result of the above adverse situation, the courts of various countries are unable to adopt relatively consistent judicial policies on the issue of new copyright disputes due to the lack of basically unified legal consensus.^[3] Take the "utilization" and daily behavior in the Copyright Law as an example. The first is private copying. Proceeding from the common sense

of society or the rational cognition of ordinary people, the "utilization" stipulated in Item 1 of Article 24 of the Copyright Law should not cover the private copying acts occurring in enterprises, units or even families. On the other hand, if the above acts are interpreted in strict accordance with the text, and such acts as graffiti in the form of cartoon images will fall into the category of utilization prohibited by the legislation. Secondly, publishing short videos or uploading WeChat pictures containing other people's works of art will also fall into the commercial exploitation prohibited by the legislation in strict compliance with the text interpretation.

In essence, the theory of natural rights is a paradigm of rights. Under its influence, copyright law is considered to be a law that mainly protects the rights of authors. From the perspective of legal evidence and the history of the development of copyright law, regardless of the legal system, the copyright law has already evolved into a law that ensures the public's access to freedom. Since the 18th century, the copyright law of Britain has taken the protection of the interests of publishers as its legislative goal, and the prohibition of reproduction and public use as its basic system. For a long time before the second half of the 20th century, publishers and broadcasters had mastered reproduction and communication technologies, that is, they had never entered the private life field due to technical restrictions.^[4] However, since the second half of the 20th century, emerging reproduction technologies such as audio recording, video recording and copying have greatly broadened the channels for the dissemination and utilization of works, especially in the private field. In the Internet era, communication networking and digital replication make the private and public fields fully connected. This technological innovation has greatly changed the long-standing interest pattern, and the scope of copyright law adjustment has also changed, from the traditional regulation of commercial competition to the legal system that restricts the use of works by the public. At this stage, how to prevent the copyright law to ensure the reasonable use of the public, in order to timely and effectively make up for the cracks between the above copyright legislation and social life is a top priority. The copyright law must follow and promote the social and cultural progress, but the actual situation shows that the copyright law can not fully adapt to the challenges posed by the huge development of replication and communication technology, and the copyright law needs to be reconsidered and adjusted from the concept and basic system level.

3. The Social Attribute of Copyright Law and Its Idea Replacement

Social

The so-called basic principle of copyright law is actually the understanding and grasp of the law of creation and its legal adjustment. Legal norms, as mandatory norms with repeated and stable application, must balance the immediate interests and long-term interests, local interests and long-term interests, and determine the value orientation and build a legal system on this basis. Therefore, what is the basic attribute of copyright law and how to treat the natural rights theory and the gains and losses of copyright legislation under its influence become the key to analyze and solve the above problems.

First of all, the legislative purpose of the Copyright Law needs to be clarified. In order to adapt to the technological progress and social development, the object of protection of the copyright law is expanding, the function of rights is increasing, and the term of protection is extending. However, we should not neglect other important social functions of the copyright law just because we pay attention to copyright. As far as the copyright law is concerned, it points to works at the micro level and to culture at the macro level. It not only guarantees works but also encourages creation to promote cultural development. The copyright law not only

focuses on the protection of static works, but also on the dissemination and utilization of works to build a creative incentive mechanism. Figuratively, the copyright law not only focuses on how to cut the cake, but also on how to make the cake bigger, which is actually the principle of legal interest balance of the copyright law. The copyright law is a complete system from the beginning, which should face both the creators and the public; We should not only protect and encourage the creation of works, but also promote the dissemination and utilization of works, because the two complement each other. In this regard, the theory of natural rights, because of its one-sided emphasis on copyright protection, has hindered the reasonable use of works by the public in the formulation and application of laws, fundamentally hindered the dissemination and utilization of works, and hindered the synchronous development of creative environment and creative resources. Therefore, the copyright law should focus on creation but works to build a complete system, and should coordinate, integrate and encourage the creation of works and promote the spread of works, realize individual value and retain many important legal values such as the public domain.

Secondly, the above-mentioned multiple value objectives correspond to the social attributes of copyright law. In fact, any legislation is based on society, especially since the change of the concept of legal power in the 20th century. Any legislation has its social attributes and social functions, but different legal departments have different ways of expression or ways of playing their roles. As a community for human survival and continuous development, society must build and maintain a sound coordination mechanism between individuals and society, and between parts and the whole. The so-called good law is also here. As both public law and private law, legislation has social attributes and social goals. Copyright law is no exception, which focuses on how to coordinate legal interests between authors and the public to promote social and cultural development. At the legal level, social attributes are the dialectical unity of private attributes and public attributes, freedom and harmony, rights and development.^[5] This is not a utilitarian annotation, but because social attribute is the upper concept of public attribute and private attribute, which is different from public attribute. They are not in the same rank. Social attribute includes public attribute. Social attribute not only covers and meets the requirements of copyright protection, but also takes into account and integrates the requirements of public domain reservation. In this regard, although the view that "protecting the public domain is far better than other benefits obtained from copyright protection" is enlightening, it still separates the dialectical relationship between the two to a considerable extent. The copyright law and its application are not only directly related to the rights and interests of creators, but also widely related to the public and public welfare, including but not limited to public access, use and participation, such as appreciation, evaluation, learning, research, education, exchange, and ultimately promote social and cultural resources, cultural environment, and cultural development.^[6] Therefore, the copyright law must provide legal convenience for the reasonable use of the public. Moreover, even the copyright itself contains such a contradictory structure as practical protection and reasonable restriction. Therefore, the copyright law clearly reflects the development trend of the public law of private law. To sum up, the so-called "exclusive" copyright or the "preferential protection" of copyright owners are biased, and the basic concept of balancing legal interests should be replaced to fit and highlight the social attributes of copyright law. On the basis of recognizing and establishing that the copyright law has a social attribute, we must recognize that the copyright law is not only a law of rights, but also a law of cultural development. Although the copyright law still belongs to the category of private law, it is increasingly showing the development trend of public law of private law. This is not to deny the basic status of copyright and copyright owner, but to integrate them with the public

under the ultimate goal of promoting the creative environment and promoting cultural development.

How to coordinate the interests of the Group with the public sphere

How to coordinate the interests of the group and the public domain has become a key topic in the development of copyright law at this stage. At different stages of development in different countries and regions, the creation, dissemination and utilization of works will face different practical problems, which promotes the constant self adaptation and sustainable development of copyright law. In the context of the popularization and networking of reproduction and communication at this stage, the core issue of copyright law has already changed from the commercial competition between publishers and broadcasters to the increasingly deep and prominent contradictions between copyright owners and the public, and between group interests and public interests. In view of the rapid development of China's informatization process at this stage, the above problems are more prominent, which has constituted one of the key constraints for the subsequent benign development of copyright law. As mentioned above, in order to achieve the overall consideration of copyright protection and public domain reservation, and achieve the dialectical unity of its private attribute and public attribute through copyright law, it is necessary to correct and overcome the shortcomings of natural rights theory and its negative impact on the formulation and application of copyright law. ^[7] Between interest groups and the public, between group interests and decentralized interests, because the latter is obviously in a weak position, it is necessary to seek the balance of legal interests and substantive fairness through the "inclined protection" of copyright law. Therefore, if we want to stick to and carry forward the social attribute of copyright law, we must build a scientific legal interest balance mechanism, which is the rational or rational legal mission of the times!

The so-called "balance of legal interests" is also an incentive mechanism. Under contemporary conditions, how should the traditional theory of natural rights achieve self-improvement and development through interpretation and amendment? The main thing is not to reconstruct the system, but to improve the system on the basis of the replacement of ideas, so as to meet the era mission of social development on copyright law. In fact, it is necessary to protect the legitimate rights and interests of authors based on their works, which include not only real works, but also potential works; The authors include not only the authors of real works, but also the authors of potential works. ^[8] Therefore, we should not only protect the exclusive rights of authors, but also ensure the reasonable use rights of the public (as potential authors and learners of works). In this regard, what the copyright law really wants to protect is not the works but the creative environment, which includes both the completed creative achievements and the social and cultural environment necessary for creative work; The copyright law really wants to protect not only the authors of real works, but also the authors who are creating, potential creators who may create, and general learners who meet the needs of cultural education and even daily life! In summary, copyright law should not only ensure that authors obtain stable expectations of rights, but also provide sufficient convenience for the public to study, work and live. This is different from free riding, which is necessary for building a benign innovation mechanism and a rational balance mechanism. ^[9] For this reason, the theory of natural rights needs to revise its own concept, and needs to shift from the focus on copyright to the balanced development between copyright owners and the public. For this, copyright law should not favor one over the other, but should be treated fairly. What is meant by "fair

treatment" or "balanced development" is fundamentally to serve the free liberation of social individuals and the cultural progress of society as a whole.

4、 Perfecting the Balance Mechanism and Innovation Mechanism of Copyright Law

Redefining the public sphere

Copyright law is not only a right law, but also a cultural law. It is not only to protect works and encourage creation, but also to promote dissemination and make full use of them. Therefore, "reservation" in the public domain has become increasingly prominent in the era of networking and information technology and has become the theme of the times when copyright law advances with the times. It is precisely because of the existence of the public sphere that the important rights of the public, such as cultural sharing, cultural exchange and cultural expression, have been established and constantly improved. In this context, the so-called "reservation" of the public domain or "exception" of copyright protection in the traditional copyright law is inappropriate!^[10]

Re define the "public sphere" in the copyright law. In the long history of the continuous development of copyright law, copyright is very eye-catching and continues to "expand" to become "explicit rights". In contrast, the definition of the public domain in the copyright laws of various countries is obscure or disproportionate.^[11] Although the public domain reservation is embodied in a series of specific systems and rules, it is difficult to find its trace in the legal texts of our country and other countries. Although with the continuous "expansion" of copyright, the public sphere has become increasingly broad or the cultural creation environment has also been improved, but it is not commensurate with its position and the mission of the times. From the perspective of legal positivism, the copyright laws of various countries mostly adopt the legislative mode of negative provisions on the reservation of the public domain, that is, adopt the way of reverse provisions, and clearly stipulate that matters beyond the scope of copyright protection belong to the public domain. However, when informatization and popularization have become an irreversible trend of development, in order to reasonably balance the disputes arising from the ownership, dissemination and utilization of works between copyright owners and the public, and to highlight the social law attribute of copyright law and amend the natural rights theory that governs the concept of copyright law, the above unscientific legislative model must be changed, and the positive definition model of enumeration and generalization must be adopted instead. On the one hand, it strengthens its clarity by listing, such as social common sense, basic principles, living habits and official documents, to provide specific and clear guidance for people's behavior; On the other hand, we should strengthen its comprehensiveness through generalization, and reserve space for the expansion of the public sphere and subsequent legislation.^[12] After the transformation, the public domain reservation in the copyright law will also move from the background to the front, and liberate from the oppression of the right law, so as to more effectively guide the formulation, interpretation and application of various systems and rules in the copyright law.

We should reverse the traditional copyright law's practice of giving preferential protection to copyright owners. Culture and creation are social, public and heritable. They are not only masterpieces of a few talents or elites, but also the products of multiple social factors or institutional conditions. Therefore, the copyright law at this stage, with the rapid development of networking and popularization, must consciously overcome and correct the shortcomings of traditional ideas and systems while ensuring copyright, and pay special attention to the balance of legal interests between copyright owners and the public, To promote knowledge

dissemination and cultural heritage.^[13] On the basis of adopting the above positive definition mode of generalization and enumeration, the public will be raised to the level of equality or symmetry with the copyright owner in the formulation and application of specific systems and rules, and the traditional inappropriate terms such as "exclusive", "exclusive", "reservation" and "exception" will be changed in legal texts and legal research, In order to completely reverse the unfavorable situation that the traditional copyright law gives preferential protection to copyright and copyright.

We must reasonably distinguish between the public sphere and the public interest. In the copyright law, the public sphere is a conventional concept both in legislation and research, and it exists independently of copyright and copyright owner. However, at the level of general legal principles, copyright and private rights, copyright owners and private persons correspond, while the public sphere corresponds to public interests, but they are not equal and cannot be exchanged. As far as the internal relationship between the two is concerned, the public sphere and its reservation are not at the same level as the public interests involved in copyright law. In contrast, the public sphere and its reservation are more general concepts in copyright law - carriers or means of realizing public interests. The public interests involved in copyright law are much broader in connotation and extension than the public sphere and its reservation. This analysis is not just a logical or theoretical inference, but has been established as a consistent basic position in the practice of copyright rule of law in developed countries such as Britain and the United States. In other words, copyright law is to achieve a broader and comprehensive cultural exchange, cultural expression, cultural research and development through the public domain and its reservation.^[14] In this way, a relatively complete and stable analytical framework can be established. First, copyright law is based on its social attribute. The social attribute of copyright law is the dialectical unity of its private attribute and public attribute. The private attribute corresponds to copyright and copyright owner, the public attribute corresponds to the public domain and public interest, and between the public domain and its reservation and the public interest promoted by copyright law, It also has the above subordinate relationship or the relationship between goals and means. To sum up, the public sphere and its reservation have become the institutional carrier linking copyright law and the realization of public interests.

Readjust the legal interest balance mechanism

Within the framework of traditional natural rights theory and current copyright law, the inclined protection of copyright is fundamentally not conducive to the scientific construction of the balance mechanism of copyright law. The symbol of the emergence of the Copyright Law is the establishment of a time limited copyright protection system based on authors' works; The term protection of copyright means that the copyright will expire after a certain period of time, and the work will enter the public domain, and the use of other people's works will no longer be restricted by copyright. The term itself contains two aspects of "term" and "term", so it has a two-sided and balanced nature, including within the term and beyond the term. Its two-sided nature is to face the right holder and the public.^[15] However, with the development of science, technology and culture, it has become increasingly important in social development and progress, and the scope of the public domain in the copyright law has gradually broken through the situation of the expiration of the term of copyright protection. Therefore, the legislative technology that traditionally balances or divides interests based on the term is difficult to meet the needs of society, so other balance mechanisms have been constantly established and improved.

In fact, there are not only factors based on traditional theories and systems, but also development obstacles based on the capture of interest groups. That is, intellectual property interest groups can obviously influence national copyright law legislation based on their own resources and advantages, while the public is relatively lack of such resources and channels.^[16] That is to say, the legal interest balance mechanism that meets the democratic and scientific requirements is difficult to establish in the copyright law. As mentioned above, the resistance encountered by adding the general clause of right restriction in the copyright law of China and Japan is a strong evidence. Such unbalanced game makes it necessary for copyright legislation and theoretical research to focus on the reservation of public interests and the realization of broader and comprehensive public interests instead of the traditional preferential protection of copyright. As mentioned above, if the current copyright law of our country is strictly interpreted, many daily learning, work and life behaviors of the public may fall into the use behavior prohibited by the copyright law, which will either cause an unfavorable situation that hinders substantive justice and cultural sharing and development, Or it may cause the "failure" of important systems or rules, thus impairing the legislative authority and may lead to more serious legal disorder.^[17]The above two situations are fundamentally not conducive to the universal observance and effective implementation of the copyright law. Therefore, we must further impose reasonable restrictions on copyright, and establish a legal realization mechanism for the reservation of the public domain and the realization of public interests.

In order to overcome the adverse effects of interest group legislative lobbying on copyright law, it is necessary to improve the level of democratic participation of the public and increase the channels of democratic participation of the public in the process of copyright law legislation. In this regard, on the basis of affirming the democracy and legitimacy of industrial participation in the legislative process, and focusing on ensuring that the public participate in the formulation and amendment of the copyright law through various forms and channels, a relatively balanced pattern of interest game will be formed. The pluralistic democratic participation mechanism or balanced interest game pattern in such legislative activities will eventually enable the copyright law legislative activities to effectively integrate relevant interest demands, constantly approach the social law attribute of the copyright law itself, truly integrate the private interests involved in the copyright law with the public interests, and give overall consideration to copyright protection and social and cultural heritage and development. The scope of protection, function of rights, duration of protection and other contents in the copyright law must constantly adjust with the social environment, technical conditions and market environment in which the works and creations are located. The above-mentioned constraints or social needs can just enter or be reflected in legislative activities and legislative results through such a pluralistic democratic participation mechanism or balanced interest game pattern.

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