



Research on the Copyright of China Musicals

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Abstract. The issue of copyright ambiguity in stage play art has been effectively controlled, and significant strides have been made in the legal framework surrounding the copyright of musicals. However, the problem of copyright infringement in musicals remains unresolved. During the Two Sessions, a proposal was submitted by Jiang Shengnan, a well-known screenwriter and member of the National Committee of the Chinese People's Political Consultative Conference, advocating for the enhanced protection of screenwriters' right of authorship. The proposal is aimed at improving the signature copyright of screenwriters and other groups. The copyright in the musical field mainly involves scripts, dances and music. These copyright fields are complex, and the phenomenon of "literary poaching" caused by difficulties in safeguarding rights and legal loopholes still exists. The existing legislation that permits the concept of "free performance" contains certain flaws. The purpose of this paper is to sort out the development course and influence of the copyright in the history of musical development in China from the perspective of dialectical philosophy, promote the construction of the copyright system of musical, and provide an international forward-looking discussion for the copyright development in this field.

Keywords: copyright, free performance, China Traditional Musical.

1 Introduction

China's musical development is far from reaching its full strength. The imperfections in the copyright construction of musicals have hindered the market creativity and their flourish. The legal loophole of "free performance" should be filled. We need to strengthen the copyright system and rectify the chaos in the industry. Author Barron's central claim in his article Copyright law's musical work is: The central claim of this article is that the work done by intellectual property discourse in forging conceptions of cultural form has been significant and important, and that copyright doctrine has accordingly played a major role in producing that plural construct which is known as 'the' musical work-concept. Author Fei Yuanhong analyzed in detail the reasons for the rise of musical copyrights in China and the characteristics and differences of different copyright purchasing and production methods in "Talking about the Copyright of Musicals". The current limited copyright research on musicals has not effectively explored

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the copyright chaos. This paper focuses on artistic copyright, collates the history of copyright evolution of Chinese musicals in detail, analyze the negative impact of copyright issues on the overall musical development, and explore the copyright situation and legal loopholes of musicals at the current stage.

2 The Development History of the Copyright of China Traditional Musical Drama

2.1 The Copyright in the Replication Stage of Musicals

In 1997, the performance of "West Side Story" marked significant progress in China's replication phase.¹ In June 2002, the premiere of the musical "Oklahoma" in Shanghai was the first major foreign musical production(imported musical) to be performed in China. The audience exhibited great enthusiasm for "Oklahoma," leading to a successful run of 21 consecutive performances with full houses.² This event initiated a series of foreign musical imports, such as "Cats," "The Phantom of the Opera," and "The Lion King," marking the replication phase in the history of Chinese musical development. In the early stages, China primarily relied on purchasing rights for performances, focusing on direct replication and copying of the originals. Such forms are mainly required by the copyright owners, especially the copyright owners of some large-scale Broadway musicals, in order to ensure the consistency of the quality and style of musicals. When the early musicals first spread to China, they lacked a complete aesthetic style, the production system was underdeveloped, the market for original creations was sluggish, and musicals, as an art form combining music, dance, drama, and performance, were not widely known. Early musicals could only be imported at high copyright costs. Due to the requirement for one-to-one replication by some copyright holders, and China did not have a complete production team, it can only invite the overseas original production team to China for rehearsal at a high cost. This one-to-one replication exposed the limitations of cross-cultural adaptations. Cultural differences and varying customs meant that early imported musicals failed to achieve the desired effect in China. Western works purchased through copyright often struggled to fit into the local cultural context, failing to establish a strong sense of "empathy." Broadway productions, which emphasize comedic elements, originated within the political and cultural environment of the United States, reflecting Western aesthetic paradigms. The differences in aesthetic paradigms and eras prevented effective empathy with Chinese audiences. "The Producers" exemplifies a foreign import that did not resonate well with local audiences.³ While the original productions were watchable and the music was enjoyable, adapting them for local productions with Chinese performers often felt odd. The lack of economic success brought a sense of frustration to China, as high copyright fees did not yield the expected financial returns. Besides cultural differences, variations in market environments also contributed to this discrepancy. This phase represented a challenging developmental period in the history of Chinese musicals. Despite the obstacles, the Chinese musical theatre realm has been actively exploring development paths based on overseas copyright purchases.

2.2 The Copyright in the Localization Stage of Musicals

After the replication phase, Chinese musicals entered a localization phase, during which China gradually developed professional musical production teams and market operation mechanisms. Instead of solely pursuing the purchase of Broadway musical rights, the focus shifted to local productions. The 2007 Chinese version of "Mamma Mia!" produced by United Asian Live Entertainment marked an accelerated integration of musical localization in China.⁴ After the copyright purchase, the aesthetic integration of cultural fit and localization was strengthened. The "script-centered" principle led to significant changes in the post-"Oklahoma" era of Broadway musical creation, shifting from the original "music-drama" principle, which focused on music, to the now prevalent "drama-music" principle centered on the narrative. This drama-centric approach was a bold reform by Rodgers and Hammerstein during the creation of "Oklahoma".⁵ Integrating plot and music in musicals is a crucial method for effective cultural reconstruction. Simultaneously, the deconstruction and reorganization of foreign musicals can create productions with stronger market appeal and enhance their economic value as art forms. During the localization phase, smaller projects were more common for rights purchases due to the greater flexibility in artistic and technical aspects. The core components of musicals are the story, music, and dance. Once the rights for these three elements are secured, other aspects can be adjusted by the production team. Many small-scale musicals allow for adaptation in their core story, music, and dance, gradually diminishing the primary function of the rights holders. To better align with market preferences and achieve optimal results, rights holders often agree to the adaptations proposed by production teams. Rights holders recognize that the popularity of a musical depends on local audiences and sometimes grant authority to local production teams to make the work more locally relevant. This mutual selection between rights holders and production teams requires the latter to have strong market foresight and professional competence to avoid "unrecognizable adaptations." At that time, the copyright mechanism was not fully developed, and the authorization by rights holders was based on high trust in the production team, requiring an assessment and acceptance of the risk of potential "unrecognizable adaptations." The whole market tends to buy the copyright of small-scale musicals due to the greater flexibility for modifications. Larger-scale musicals offered less room for changes and were typically less suitable for adaptation, as minor changes could significantly affect the entire narrative. During this period, China not only advanced cultural integration through localization but also continued to develop the professional original musical production. This era coincided with the early stages of internet proliferation, which had not yet reached a high penetration rate, so the dissemination of musicals remained primarily offline. The discovery and circulation of copyright issues were late and slow, and copyright problems had not yet erupted on a large scale.

2.3 The Copyright in the Original Stage of Musicals

Under strong policy support, Chinese musicals have undergone two phases of cultural accumulation and have now become a highly disseminated form of drama in China. A

large number of professionals and audiences have emerged in society, and Chinese musicals have entered an original stage with numerous original works entering the market. For example, the musical "Jinsha," which premiered at the Beijing Poly Theater on April 8, 2005, has become a classic representative of Chinese musicals, creating a cultural symbol for the city of Chengdu. In the same year, "Crazy Snow", a tribute play commemorating the 60th anniversary of the victory of the world anti-fascist war, was successively released in Shanghai.⁶ Many musicals adapted from literary works have also been produced. For instance, "The Age of Awakening," which had its first round of performances in Beijing around May Day 2023, sold out every show, sparking a wave of enthusiasm for viewing. Adaptations of popular web dramas such as "Cat's Cradle" and "The Long Night," based on Zijin Chen's "Social Deduction Trilogy," became the highest-rated web dramas of 2020. Musicals adapted from TV series like "On The Road," "Under the Skin," and "Ideal City" have also been staged, showing an increasing trend of purchasing rights for derivative literary and film works. Musicals, being an integrative art form, involve a wide range of copyrights, including music, stage play, script, dance, and film adaptation rights. With the advent of the digital age, a series of related copyright issues have emerged. For example, Zhou Liya, the chief director of "Poetic Dance: The journey of a Legendary Landscape Painting," posted on Weibo, accusing the dance "The Two Fragrant Paths" of plagiarizing "Poetic Dance: The journey of a Legendary Landscape Painting".⁷ Plagiarism incidents have also been noted with "Song of the Fisherman" from "The Eternal Wave" and "Beauty Walks" from "Du Fu".⁸ In 2020, Lin Xiaozhai, a trainee on "Youth With You 2," performed a dance titled "Magical Girl Make Up" on the initial stage, which was alleged to have plagiarized the original choreography "Sailor Moon Make Up" by dance instructor Tuzi.⁹ At the fourth Shenyang 1905 International Contemporary Drama Festival, a stage play named "Disco Elysium" was suspected of plagiarizing the game of the same name.¹⁰ The play "Perfect Match" was accused of plagiarizing the stage play "Carousel".¹¹ A batch of large-scale stage puppet shows has been created in recent years, including adaptations of classic works such as "Pinocchio," "The Little Mermaid," "Swan Lake," "The Seven-Colored Lake," "The Wizard of Oz," and "The Nutcracker".¹² Zhou Chunling, the head of the puppet theater, stated, "During the national tour, we found that some productions had been plagiarized by individual theaters or persons without our consent, and our entire plays were copied." 2019 year, In 2019, Guan Xiaotong collaborated with the Mind's Voice Disabled Art Troupe to perform "Thousand-Hand Guanyin" on Zhejiang TV's variety show "Ace vs Ace." Subsequently, the China Disabled People's Troupe of Art issued a statement saying that the "Ace vs Ace" version of "Thousand-Hand Guanyin" was unauthorized and contained attribution errors.¹³ With the advent of the digital age, copyright issues have increasingly emerged.

3 The Negative Influence of Musical "Copyright Poaching"

The development of Chinese musicals has a history spanning nearly 40 years. Observing its intrinsic growth, it has been remarkably rapid. In 2021, China added musical

theater as an academic discipline, with numerous universities establishing related programs. Theater development and discipline construction are crucial media for the early growth of Chinese musicals. The advent of the digital age and the widespread use of intelligent media devices have led to the anticipated transformation of musicals. Shows like the musical theater variety program "City of Music" have promoted the spread of musicals, effectively popularizing a wealth of musical theater knowledge. However, considering the market structure of musicals, despite efforts to transition into the digital era, the primary mode of dissemination remains live theater performances. This has not yet achieved the expected level of outreach. The limitations are detrimental to individual groups seeking to acquire aesthetic appreciation, and the expected costs for this effort are substantial. Original musical theater videos have not been effectively released on the internet. Past works in the musical theater market are sealed and have no searchable channels, making most musical theater productions unavailable online. The above particularly pertain to non-cinema, outdated musical videos. Producers need to ensure the confidentiality of these videos to enhance box office sales. If audiences could access videos online, it would severely impact offline private theaters. Thus, cinema musical theater is beyond the discussion scope. Industry professionals and educators can only access effective video clips through internal channels. Currently, there is no well-established system for the disclosure of musical theater videos. For instance, musicals like "My Bucket List" directed by He Nian and Mada in 2016, and "Liu Tianhua" produced by the Beijing Chinese Orchestra and Peking University's Center for Ethnic Music and Musical Studies in 2021, have no full versions available online. The fundamental reason for the inadequacy in the disclosure of non-cinema musical theater videos is the market's distrust in cultural poaching system. The rise of the internet era and the negative impact of economic benefits have led to "information overload" and video piracy. This particularly dues to the weak enforcement of rules against unauthorized performances by various institutions. The definition of plagiarism and unauthorized reproduction is unclear, making effective disclosure and delineation difficult. Creators cannot secure robust copyright protection for their works. Weak copyright awareness and ambiguous copyright systems greatly diminish the creators' desire to create. Another reason focuses on the phenomenon of video editing by online channels. The quick edits and fragmentation presented by online video channels significantly undermine the original aesthetic structure of musicals, presenting them in a fast-food culture manner. This phenomenon also constitutes defamation and denigration of the producers. Additionally, producers are often unwilling to invest significant time and financial resources in prolonged legal battles, highlighting the uncertainty of the copyright system. Some creators are also dissatisfied with their musical works and choose to permanently seal them without any disclosure. The musical theater market, including the broader drama market, offers producers considerable freedom, which enhances their creative drive but does not benefit the advancement of the musical theater aesthetic field. Without any precedents in the creative domain, creators continue to adhere to the aesthetic paradigms of classic Broadway musicals, leading to stagnation in the aesthetic field. An explicit mechanism for the disclosure of non-cinema musical theater is necessary to stimulate the creative market's vitality, enhance the creative drive of production teams, and aid the construction and elevation of the musical theater aesthetic field, resulting in

the birth of superior musical theater works. On the audience level, watching theater performances demands substantial effort and planning. If personal circumstances cause someone to miss a performance, there might not be another opportunity to see the work. Despite many musicals touring nationally, most cannot achieve full national tours due to economic constraints and profitability issues. Depending solely on offline theater viewings prevents audiences from keeping pace with the digital age's transformation. The inability to access effective viewing videos online fundamentally reduces the functionality of musical theater dissemination. The distribution of theaters in China has not achieved comprehensive coverage, leaving audiences in many third- and fourth-tier cities without theater facilities with no effective channels to access musicals. This closed-loop information channel is the main reason for the low dissemination rate of the musical theater market, which is detrimental to the healthy development of the aesthetic field.

4 Discussion on the "Free Performance" of Musicals in the China Copyright Law

The Copyright Law protects works with original expression. Works that meet certain conditions, whether created in Chinese or not, or even not put into words, such as dance creation, staff, artistic scenes, computer soft works, are protected by the law. According to the provisions of Article 21 of the Copyright Law, the term of protection of the copyright of a work shall end on December 31st, 50th year after the death of the author. The legal significance of whether a musical constitutes a "work" and what kind of "work" it belongs to is that not all the components that constitute a musical are "works" and are protected by copyright. Take "Oklahoma" as an example, the score in the play belongs to a musical work, and the Chinese script translated from "Oklahoma" is also a written work. Although the actor's performance is not a "work" in the sense of the Copyright Law, it is protected by the performer's rights according to Article 38 of the Copyright Law and enjoys certain rights. The musical as a whole, as a work based on the original and translated works of "Oklahoma", should be performed in accordance with the provisions of Article 37, paragraph 2, of the Copyright Law, at least with the consent of the rights holder of the translation of "Oklahoma" and the rights holder of the script, and be granted permission to perform. But the above discussion is only limited to commercial performance of musicals. In the fourth section, the Copyright Law stipulates the restrictions on generalized copyright, enumerating that under certain circumstances, it is allowed not to pay remuneration without the permission of the copyright owner, but the name of the author and the work should be specified, and the act in this scenario does not infringe copyright. One of the cases is the "free performance" stipulated in Article 22, paragraph 1, item 9. Refers to the "free performance" of published works, and the performance did not charge any fees to the public or pay remuneration to the performers. This provision is very strict yet vague, such as the condolence performance organized by the art group, which covers the works of others with copyright. Although this behavior does not charge the public, it does not meet the def-

inition of "free performance" because the organizer has to pay the performers. Similarly, covering published music works at charity parties is not in line with the intention of "free performance" because it aims to encourage the public to raise funds. Therefore, although morally worthy of publicity, it is still suspected of infringement. Therefore, it conforms to the "free performance" for the literary and art associations in colleges and universities to not pay the actors as the performance consideration, but also to open to the public free of charge, and there should be no risk of copyright infringement. However, nothing can be divorced from the current legal context. If the school is a professional drama school, and the performance is actually used for publicity and promotion of the school, and the performance has also increased the visibility of the school to a certain extent, it should still constitute copyright infringement, and you should seek permission from the original author of the musical "Oklahoma". The copyright law system places the author's personal rights and interests as the primary right in most countries, so it can't be ruled out that the works rehearsed by the school community actually distort and tamper with the original novel of "Oklahoma", infringing on the personal rights of the original author.

The Berne Convention generally limits fair use and allows the use of other people's works for reasonable purposes, but "it must conform to fair practices". According to the international judicial practice and the general cognition of theoretical circles, the cases listed in Article 10 of Berne Convention are only some cases of fair use, which does not mean that only these two kinds of cases belong to fair use, which is different from the positive enumeration of fair use in China's copyright law.¹⁴ In addition, according to the legal practice of the whole international intellectual property law system, it can also be seen that the Berne Convention and other international conventions determine abstract principles rather than specific unified rules. As the Berne Convention stipulates the principle-based inspection standard, the rational use of these standards has also developed in different countries' judicial practice. For example, in addition to the scope of fair use, Article 107 of the American Copyright Law also determines four criteria: 1. The purpose and nature of use, including whether such use is commercial or for non-profit educational purposes; 2. The nature of copyrighted works; 3. Compared with the whole copyrighted work, the number of parts used and the substance of the content; 4. The impact of such use on the potential market or value of copyrighted works. The court will also consider other factors. In addition, in terms of free performances, the World Intellectual Property Organization believes that it must be strictly limited within the scope of no direct or indirect fees and no remuneration to performers.¹⁵ Article 34 of the British Copyright Law, Article 110 of the U.S. Copyright Law, Article 52 of the German Copyright Law and Article 39 of the Japanese Copyright Law all impose strict restrictions on free performances. Many countries emphasize that free performances cannot be directly or indirectly profitable, which is also reflected in many legal precedents.¹⁶ For example, if a company gives a free performance to promote goods and a hotel plays music to attract customers, it is profitable without charging the audience immediately, so it should also be excluded from fair use. In a specific case, the fair use should also evaluate the purpose of its performance, whether it is profitable, whether it is used for competition, whether it is plagiarized, and whether the results harm the interests of the original copyright owner. Since international treaties stipulate

the minimum protection standards, we should make further judgments according to domestic laws on the premise of meeting the minimum protection standards. Article 23 of China's Copyright Law should also be understood it is a free performance if it meets the standard of fair use, instead of being understood as a fair use as long as it is a free performance. In addition, from the point of view of consistency, if only foreign works are applicable to the Berne Convention and judged only according to the two situations of fair use given by the Convention rather than the principle, the performance of foreign works in China cannot be regarded as fair use. At the same time, China's works may belong to fair use when the Copyright Law is applied, which obviously provides super-national treatment for foreign works, which is unreasonable in the field of intellectual property rights.

5 Conclusion

Chinese musical theater exhibits the characteristics of a flourishing era but has not yet developed to its full potential. The inadequacies in copyright infrastructure significantly impact the market's creativity in the musical theater sector, severely hindering its positive growth and international development. Legal frameworks addressing musical theater infringement need strengthening, and the legal gaps in "free performance" must be filled to build confidence in the musical theater domain. This would promote the popularity and dissemination of musical theater and provide a fertile creative soil for its development, while strictly prohibiting instances of "academic poaching".

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