

On the Optimization of the Scope of Protection for the Right of Alteration and the Right of Integrity

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Abstract

There have been great disputes on the scope of control over the right of alteration and the right of integrity in China's Copyright Law. In the judicial practice of the courts, there is also confusion about blurring the boundary of rights and different standards of infringement. The right of Alteration can be regarded as a "right to support the bottom" and jointly control others' unauthorized alteration of the author's works together with the right to protect the integrity of the work. At present, judicial practice adopts objective standards to judge the infringement of the right of integrity, while distortion and tampering are highly subjective judgments. If an act of revision is not considered to be "likely to cause damage to the author's reputation", even if the author subjectively thinks that they have been greatly violated, the act will not be considered as an act violating the right of integrity of the work. The right to alter can be interpreted as the exclusive right to judge the infringement by subjective standards and to expand the scope of protection of the personal rights of works. Weak tort relief is adopted to prevent the imbalance between the public interest and the author's interest.

Keywords

Right of Alteration, Right of Integrity, Optimization

1. Introduction

Article 10 of China's Copyright Law defines the right of Alteration and the right of integrity. The right of Alteration refers to the right to alter a work or authorize others to do so; the right of integrity refers to the right to protect a work from distortion or alteration. However, the law does not provide specific explanations

for the terms “Alteration,” “distortion,” and “falsification.” Consequently, there are various viewpoints in theory and practice regarding the scope of control and infringement determination of these two rights.

2. Current Theoretical and Practical Situation

2.1. Critique of Various Academic Views

Currently, theoretical circles distinguish between the protection scopes of these two rights through several main theories: the two-aspect theory of the same right, the dynamic and static distinction theory, the expression and idea distinction theory, the supplementary reconstruction theory, and the deletion reconstruction theory. The two-aspect theory of the same right is the prevailing view in theoretical circles, which holds that “the right of Alteration and the right of integrity are two aspects of the same right. Specifically, from a positive perspective, the author has the right to alter their work and authorize others to do so. From a negative perspective, the author has the right to prohibit others from distorting, altering, or fragmenting their work” (Li & Xu, 2003). According to this view, the scope of control for the right of Alteration and the right of integrity is identical, rendering it unnecessary for the Copyright Law to independently establish two rights with the same content. The wide support for this view has indirectly led some courts to not distinguish between the right of Alteration and the right of integrity in judicial practice, citing the same reasons to find that an infringer has violated both rights simultaneously. This phenomenon further demonstrates that if this view is supported, there is no need to stipulate the right of Alteration and the right of integrity as two separate rights.

The distinction between dynamic and static perspectives holds that the right of Alteration focuses on protecting the author’s right to revise their work when their ideological views change, in order to maintain consistency between the work and the author’s dynamic thoughts. In contrast, the right to protect the integrity of a work safeguards the static thoughts and opinions of the author embodied in the existing work. Scholars involved in legislation have partially explained the right of Alteration in a way that reflects its dynamic nature: “As objective things change, people’s thoughts and understandings also constantly evolve, and authors may need to make practical Alterations to certain works. Authors not only enjoy the rights arising from their works but are also responsible for the social effects of those works. Therefore, authors should have the right of Alteration.” (Hu, 2002) Based on this, some scholars further argue: “The right of Alteration emphasizes the protection of the author’s creative freedom. When the author’s thoughts or opinions change, they should be allowed to make changes to their work themselves or authorize others to do so in order to maintain consistency between the work and the author’s thoughts and opinions (Liu, 2010a).” This paper believes that using this distinction to delineate the scope of protection for these two rights has a certain degree of rationality, but relying solely on the right of Alteration is insufficient to effectively protect the dynamic consistency between the author’s

thoughts and their work. The reason is that the right of Alteration does not have priority over transferred economic rights in copyright or the creator's rights of licensees (Wang, 2007). Therefore, interpreting the right of Alteration according to this perspective undoubtedly undermines the effectiveness of the legal system related to this right.

The expression and idea distinction theory believes that the right of Alteration protects the external expression of a work, while the right of integrity protects the internal ideas of the work (Zhang, 2003). This distinction has two primary issues: first, the boundary between ideas and expression is often blurred, leading to a fuzzy distinction between the right of Alteration and the right of integrity; second, the purpose of distinguishing between ideas and expression is to determine which parts of a work are protected by the Copyright Law, requiring courts to undertake considerable work. However, the direct purpose of courts in determining infringements of the right of Alteration and/or the right of integrity is to provide relief to the author, rendering this distinction of limited practical significance. Additionally, this view is inconsistent with global legislative trends (most countries adopt an objective standard in determining violations of the right of integrity, focusing on potential damage to the author's reputation). Assuming an unauthorized alteration that solely alters the linguistic descriptions of a secondary character in a novel to extremely vulgar and obscene language, it is evident that such a modification does not affect the work's ideas, but it sufficiently harms the author's reputation. Hence, this assertion is contrary to the global legislative trend.

The supplementary reconstruction theory suggests that China's Copyright Law should draw from other countries that stipulate the right of Alteration in their Copyright Laws, introducing rights such as the right of withdrawal and the right to access the work. This paper considers this approach reasonable and feasible, albeit its importance is debatable.

The deletion reconstruction theory contends that the protection scopes of the right of integrity and the right of adaptation nearly fully encompass the protection scope of the right of Alteration: "The right of Alteration only controls partial changes to the content of a work and corrections of words and phrases, where the result of such Alteration neither distorts nor alters the work nor leads to the creation of a new work." (Wang, 2016) Therefore, the right of Alteration can be directly deleted. This paper disagrees with this view. Currently, the infringement determination for the right of integrity adopts an objective standard; hence, if an Alteration is not deemed "potentially damaging to the author's reputation", even if the author subjectively feels strongly aggrieved, such conduct will not be considered an infringement of the right of integrity. This gap in the control scope of the right of integrity can be filled by the right of Alteration.

2.2. Current Status of Judicial Practice

In judicial practice, courts face issues of unclear relationships between the right of Alteration and the right of integrity and inconsistent standards for infringement de-

termination. Specifically, some courts distinguish between the two rights, while others do not (or at least do not reflect a distinction in their verdicts); different courts adopt varying standards for determining infringements of the right of integrity.

3. Evaluation of the Third Revision Progress of the Copyright Law

The “Review Draft of the Copyright Law of the People’s Republic of China (Amended)” (hereinafter referred to as the “Review Draft”) merges the right of modification into the right to protect the integrity of a work, stipulating: “The right to protect the integrity of a work refers to the right to permit others to alter the work and to prohibit the distortion or alteration of the work.” It is evident that the legislation has not attempted to address the chaotic situation in legal practice at its source.

This amendment initiative indicates that the revisers basically agree with the “two-sided theory of the same right” and the “deletion and reconstruction theory.” Their supporters argue that since the scope of protection for the right of modification and the right to protect the integrity of a work is basically the same, the two rights can be merged into one. As seen from the statistical data mentioned above, there are not many courts in judicial practice that do not distinguish between the right of modification and the right to protect the integrity of a work. Simply merging the right of modification into the right to protect the integrity of a work based on the “two-sided theory of the same right” acknowledges the judicial experience of a minority of courts, but it only addresses a small part of the problem and even introduces new issues. According to the “two-sided theory of the same right,” the Review Draft defines the right to protect the integrity of a work from both positive and negative perspectives: positively, the author can alter their work or authorize others to do so; negatively, this right excludes the distortion or alteration of the work by others. However, this definition still fails to delineate the scope of protection for the right to protect the integrity of a work. Does any unauthorized modification of a work constitute distortion or alteration, or does it only constitute modification in the sense of the Copyright Law when the modification reaches an objectively distorting or altering level? Additionally, the criteria for determining infringement of the right to protect the integrity of a work have not been provided by law. Therefore, without timely follow-up from other laws, regulations, or judicial interpretations, a mere consolidation of the two rights into one will not bring much practical significance.

4. Optimization of the Right of Alteration and the Right of Integrity

To clarify the scope of protection for the right to alter and the right to protect the integrity of the work, we should start from the direct functions of moral rights in legal practice. When delineating the boundaries of these rights, we should balance the interests of authors and social public interests while considering the convenience and efficiency of practice.

Article 6 bis of the Berne Convention sets a minimum standard for member countries to protect the moral rights of authors: “...authors shall have the right to claim authorship of their works and to object to any distortion, mutilation, or other Alteration of, or other derogatory action in relation to, the said works, which would be prejudicial to their honor or reputation.” Therefore, according to the Berne Convention, any alteration that objectively damages the author’s reputation is an infringement of the right to protect the integrity of the work. Thus, regardless of how the boundaries of the right to alter and the right to protect the integrity of the work are defined, it is certain that “alterations that objectively damage the author’s reputation” must be controlled by moral rights. Centered on the minimum standards set by the Berne Convention, there is considerable controversy about the extent to which the scope of the right to alter and the right to protect the integrity of the work should be expanded.

This paper believes that the scope of protection for the right to protect the integrity of the work should directly adopt the standards stipulated in the Berne Convention. That is, “potential damage to the author’s reputation” should be taken as a constituent element of infringement of the right to protect the integrity of the work. The right to alter should serve as a supplement to the right to protect the integrity of the work, controlling “alterations made to a work by others without permission, which objectively do not damage the author’s reputation but are unacceptable to the author subjectively”, to prevent authors from receiving no legal remedy when a court does not recognize an alteration as “potentially damaging to the author’s reputation.” The rationality of this viewpoint will be analyzed below.

4.1. Doubts about a Purely Objective Standard

Some scholars argue that “China should not adopt a strictly subjective standard for judging infringements of the right to protect the integrity of the work but should introduce an objective judgment standard, stipulating that only distortions, mutilations, Alterations, or other damaging actions that objectively cause damage to the author’s reputation constitute infringements of the right to protect the integrity of the work.” (Li & Xu, 2015) The main reasons supporting this viewpoint are that it conforms to international legislative trends, promotes China’s cultural development (Yin, 2015), prevents overly strict copyright protection from affecting social public interests, and prevents authors from filing excessive lawsuits.

There are two main viewpoints regarding the legislation on moral rights in various countries. The more mainstream one is the “principle of interest balance,” which refers to “the institutional arrangement in intellectual property law that balances the exclusive or monopoly interests of intellectual property rights holders with the public interest in accessing knowledge and information and the broader social public interest in promoting scientific, technological, cultural, and economic development based on this”. (Feng, 2003) The other is the traditional viewpoint of civil law countries, which believes that “a work is an extension of the

author's personality and the embodiment of their spirit... Copyright is a natural right, not a right created by national laws. It is a right that authors naturally enjoy due to their creative acts, and laws only recognize and protect this human right.” (Wang, 2016) Comparing these two viewpoints, it can be seen that the main basis for supporting the objective standard is the “principle of interest balance.”

However, even under the premise of the “principle of interest balance,” it is not advisable to adopt a purely objective standard. The reason is that the factors influencing the relationship between the author's and social public interests are not only the scope of control of rights but also the magnitude of tort liability. Assuming two extreme legislative approaches: adopting the minimum protection standards of the Berne Convention to determine infringements of the right to alter and the right to protect the integrity of the work but stipulating that infringers will inevitably bear severe criminal liability or adopting a subjective standard to determine infringements of these rights but stipulating that no matter how serious the distortion or alteration is, the infringer only needs to make an apology. Regarding these two protection methods, who can say that the former provides weaker protection and focuses more on public interests than the latter?

It is evident that the balance of interests is adjusted by two factors: the scope of rights and tort liability. For “alterations made to a work by others without permission, which objectively do not damage the author's reputation but are unacceptable to the author subjectively (i.e., actions that constitute infringements under a subjective standard but not under an objective standard, hereinafter referred to as ‘minor alterations’),” the law can provide weaker relief for the author and let the infringer bear relatively mild tort liability (such as only needing to make an apology) to balance the conflicts between social public interests and the author's interests. For instance, a photographer captures a landscape photograph, and another party, without permission, slightly darkens the background to emphasize the subject. The photographer expresses dissatisfaction, deeming this alteration to have compromised the artistic conception of the work—a subjective infringement. However, objectively, the modification does not significantly alter the overall effect or diminish the artistic value of the photograph. In such a case, the court may require the infringer to offer a formal apology to the photographer but refrain from imposing monetary damages, thereby balancing the protection of the author's rights with the avoidance of undue restriction on public interest.

Emphasizing the necessity of an objective standard solely based on the principle of interest balance while ignoring the role of tort liability is indeed biased.

4.2. China Should Adopt a System Combining Objective and Subjective Standards

As mentioned above, even if the scope of the right to alter and the right to protect the integrity of the work is broad, as long as the undertaking of tort liability is reasonably limited, the balance of interests will not excessively lean towards the

author's side.

This paper believes that the actions controlled by the right to protect the integrity of the work should be “alterations made to the work without permission that objectively damage the author's reputation,” that is, the determination of infringements of the right to protect the integrity of the work adopts an objective standard, and the infringer should bear relatively severe civil liability. The right to alter controls “any alteration made to the work without permission,” that is, the determination of infringements of the right to alter adopts a subjective standard, but the infringer only needs to bear very mild civil liability.

Similar to the relationship between the right to life and the rights to health and physical integrity, when violations of the rights to health and physical integrity are severe enough (resulting in death), they will lead to violations of the right to life. By the same token, when violations of the right to alter are severe enough to reach the level of “objectively damaging the author's reputation,” they will lead to violations of the right to protect the integrity of the work.

The rationality of this system is as follows: First, although the scope of protection for the right to alter is broad, for alterations that are minor, unauthorized, do not affect the ideological content of the work, and do not damage the author's reputation, determining the alterer as an infringer but only requiring them to bear very mild civil liability has more declarative significance without harming social public interests. Its purpose is only to comfort the author.

Second, for “marginal actions”, that is, alterations that are difficult to determine whether they objectively may damage the author's reputation, the right to alter can serve as a fallback right, providing the author with the minimum guarantee of legal relief.

Third, under this system, although the scope of protection for the right to alter is broad, it is not sufficient to lead to excessive litigation because for lawsuits involving minor alterations, even if the author wins, they will only receive cessation of the infringement, an apology (perhaps with a very small amount of financial compensation). When the relief received by the author is less than the time cost of the lawsuit, excessive litigation is unlikely to occur.

Fourth, if the author knowingly files a lawsuit for minor alterations without seeking objective compensation, it indicates that the author has indeed suffered significant subjective damage and seeks spiritual comfort even without material gain. Then, such a demand should be accepted by the law.

When an infringement occurs, authors can file claims based on dual rights (objective and subjective standards), enhancing the flexibility and effectiveness of rights protection and providing more comprehensive safeguards. The objective standard ensures economic compensation for measurable losses (e.g., software piracy cases governed by Article 54 of the Copyright Law), while the subjective standard protects authors' emotional and reputational interests, preventing malicious alterations or misuse of their works. This dual approach indirectly promotes the standardization of copyright protection and incentivizes authorial creativity. Sim-

ultaneously, the subjective standard deters willful infringements targeting an author's persona, fostering a healthier industry environment.

4.3. China's Practical Path for Dual Standards under the Legal Framework

In the legislative context, it is essential to establish a clear legal framework that defines the scope of application for dual standards. For commercial infringements, such as the sale of pirated software, where economic losses can be quantified, the objective standard can be directly applied. This involves the infringer compensating the rights holder for actual losses incurred or the infringer's illegal gains, as stipulated in Article 54 of the Copyright Law. The subjective standard, on the other hand, can be applied on the basis of the objective standard to non-commercial infringements or cases involving violations of moral rights, such as unauthorized alterations of the work's content or infringement of the author's right to attribution. Additionally, by refining legal provisions and establishing typified rules, differentiated regulations should be developed for different types of works and infringement scenarios to ensure that the boundaries of application for dual standards are clear and operationally strong.

At the judicial level, the introduction of subjective standards places higher demands on the judicial capacity of courts, requiring them to exercise discretionary power to define the nuances of "minor" infringements and their "impact" on the exercise of rights. The Supreme People's Court can clarify the definition of "minor" through the issuance of guiding cases or lists, delineating the boundaries of application between objective and subjective standards. Courts should also establish a tiered adjudication mechanism: small-claims procedures should be applied to cases with smaller amounts in dispute and simple controversies, prioritizing the objective standard for quick resolution; complex cases should allow judges to consider both public interest and authorial rights, taking into account both objective and subjective standards. Furthermore, by strengthening judicial training, enhancing the ability of judges to adjudicate complex cases, especially in assessing the impact of infringements on public interest and recognizing moral harm, and by considering both economic losses and emotional distress in assessing damages, the fairness and justice of judicial decisions can be ensured.

At the enforcement and societal awareness levels, administrative supervision and mediation should be strengthened, and diversified dispute-resolution mechanisms should be improved. Public awareness of copyright should be enhanced through media, schools, and community activities, helping the public understand the significance of dual standards. Industry self-regulation should be promoted by encouraging industry associations to develop self-disciplinary norms and guiding enterprises to comply with copyright rules. By relying on technologies such as big data and artificial intelligence to record infringement behaviors, data support can be provided for the application of objective standards, improving enforcement efficiency.

5. Discussion on Other Potential Issues Related to the Right of Alteration and the Right to Protect the Integrity of Works under a System Combining Objective and Subjective Standards

5.1. Does the Right to Protect the Integrity of Works Safeguard the Author's Reputation or the Identity between the Author and the Ideas Expressed in Their Work?

Some scholars propose: “To address whether damaging the author’s reputation should be considered a constituent element of infringing upon the right to protect the integrity of works, we must first clarify what specific interests of the author this right protects. If the purpose of this right is to uphold the author’s reputation, then damaging reputation should be considered a constituent element of infringement; if the aim of this right is to maintain the identity between the author and the ideas expressed in their work, then damaging reputation should not be a requirement for infringement.” (Liu, 2010b)

The paper argues that the starting points of safeguarding the author’s reputation and preserving the identity between the author and their work’s ideas are not irreconcilable. We can interpret “the author’s reputation” as “the reputation that the author expects and cherishes.” For instance, when a park is proposed to be converted into a parking lot, with an equal number of supporters and opponents, a commentator publishes an article in a newspaper supporting the conversion. The reputation they “expect and cherish” must be among the supporters. If a newspaper editor opposes the conversion, modifies the commentator’s work without permission, or distorts its message to oppose the conversion, it will lead to outcomes contrary to the author’s expectations. Although from a societal perspective, the author’s reputation remains unchanged due to the equal number of supporters and opponents, this Alteration is sufficiently serious.

For the author, their reputation within their social circle is undoubtedly more important than among strangers. An author’s ideas and stance significantly influence their choice of friends, so their social circle is predominantly composed of individuals with similar ideas and stances. Therefore, the identity between the author and their work’s ideas is also a manifestation of the author’s reputation, and safeguarding the author’s reputation does not exclude protecting the identity between the author and their work.

Interpreting “the author’s reputation” as “the reputation that the author expects and cherishes” does not equate to adopting a subjective standard. The specific standard the author “expects and cherishes” cannot be arbitrarily claimed by the author but should be objectively judged through the original work. For works with the potential to “not infringe upon the author’s overall social reputation but infringe upon identity”, their ideas and stances are inevitably clear. An author who creates works with unclear ideas and stances will not particularly seek positive evaluations from a specific group during creation. Thus, only works with clear ideas and stances need protection based on “identity.” Protecting this “identity”

only requires interpreting “the author’s reputation” as “the reputation that the author expects and cherishes.”

5.2. Do the Rights to alter and Protect the Integrity of Works Safeguard the Static Ideas Expressed in Works or the Author’s Dynamic Ideas?

This question is mainly raised by those who hold the view of “distinguishing between dynamics and statics.” The discussion above has illustrated the irrationality of this view, but the question raised thereby still warrants discussion.

When the author’s current ideas align with those expressed in their work, the outcome is the same regardless of whether the rights to alter and protect the integrity of works safeguard static or dynamic ideas. Therefore, this question only has value when the author’s current ideas and opinions conflict with those expressed in their work. It has been stated that the rights to alter and protect the integrity of works alone are insufficient to counteract transferred economic rights or licensees’ claims. If an author intends to alter their published work due to a change in their ideas, legal adjustments to such actions should rely on introducing relevant systems such as “withdrawal rights” and “right of access to the work.”

Thus, the only discussion-worthy behavior is “someone altering the author’s previous work without permission, solely based on the author’s latest idea expression, such that the original ideas expressed in the work are changed to the author’s latest ideas.” This behavior alters the static ideas of the work without affecting the author’s dynamic ideas. The paper believes that the author has the right to deliberately express different ideas at different times, places, and to different people, and others cannot alter a work without permission solely based on the author’s idea expression. Consider an extreme scenario: a schizophrenic’s ideas in two personality states will certainly differ. Allowing others to alter the author’s work based on their ideas and expression would be tantamount to disrespecting the two personalities of a schizophrenic.

6. Conclusion

This paper underscores the necessity of refining China’s Copyright Law to balance authors’ moral rights with public interests. By critiquing prevailing theories and judicial inconsistencies, it advocates a dual framework: adopting the Berne Convention’s objective standard (reputational harm) for the right of integrity while leveraging the right of Alteration as a subjective safeguard for minor, unauthorized alterations. This approach mitigates judicial ambiguity and prevents overreach, offering authors redress for subjective grievances without stifling public access.

Future reforms should integrate supplementary mechanisms, such as withdrawal rights, to address conflicts between evolving authorial intent and existing works. Empirical studies on litigation trends and cultural impacts could further optimize liability thresholds. Ultimately, harmonizing moral rights with societal

needs fosters a dynamic creative ecosystem—upholding authors’ dignity while promoting innovation in China’s digital age. The right of Alteration and the right of integrity of a work should encompass both the expression and the ideas contained within the work. Issues arising from changes in an author’s thoughts and viewpoints should be addressed by other systems.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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