

## Theoretical Disputes and Comments on Copyright Pledge of Future Works

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### Abstract

The copyright of future works is the right enjoyed by the copyright owner of works that have begun to be created but completed at a certain time in the future. Whether the copyright of future works can be pledged is not only an important issue considered and studied by many scholars in China, but also a widely debated issue. Combing the theoretical disputes of copyright pledge of future works, and analyzing the relevant views of negation and affirmation, the copyright pledge of future works is more legitimate.

### Keywords

Future Works; Copyright; Pledge.

### 1. Preface

As one of the three pillars of intellectual property rights, copyright plays an important role. In recent years, there have been many discussions on the copyright of future works. There are immeasurable values hidden behind future literary works, future film works and future music works. These values are exactly where the economic value of copyright lies. At the same time, this value is also one of the ways for cultural enterprises to alleviate the financing difficulties and high threshold. At present, there are no specific provisions on the copyright of future works in China's laws, and the copyright of future works itself is uncertain. Taking it as the subject matter of pledge has become the focus of controversy in the academic circles. Combing the theoretical disputes of copyright pledge of future works and exploring whether the relevant views are reasonable, whether from the theoretical or practical level, is of great significance to promote the development of copyright pledge of future works and the whole intellectual property security system.

### 2. Definition of Copyright of Future Works

#### 2.1. Meaning of Copyright of Future Works

Different countries have different understanding of the meaning of copyright in future works. Britain defines the copyright of future works in this way. It is possible or future copyright due to the occurrence of something or a future work or a certain type of work. German copyright law stipulates that the future copyright, that is, the works that the copyright owner has not created, must sign a written contract when granting the future copyright, and specify the specific period for terminating the contract. France stipulates that all future works shall not be transferred, but the agreement between the author and the publisher on future works of a specific genre is legal, and the number of works is limited to five.

China's interpretation of the copyright of future works is generally referred to as "future copyright", which refers to the rights enjoyed by the creators who have started to create but have not completed the work yet and will complete the work at some time in the future. It is

different from the copyright of ordinary works. (Article 6 of the regulations for the implementation of the copyright law ) stipulates that "copyright shall arise from the date of completion of the creation of a work." In other words, once a work is created, it produces copyright, which means that copyright is the right enjoyed by the creator of the completed work. The copyright of future works is an unfinished and immature form of works, which is the right enjoyed by the copyright owner of works that have begun to be created but completed at a certain time in the future. The copyright of future works exists in the form of unfinished works. It is precisely because of the special form of copyright of future works and the great market potential that some investors are aware of the potential commercial value and interests of copyright of future works, and do not hesitate to buy the copyright of future works at a high price to occupy the market opportunity. Many large websites, such as tudou.com and pps.com, will choose some well-known variety shows to buy their exclusive network broadcasting rights in the next few years. In the publishing industry, there is still a phenomenon of soliciting manuscripts to publish books. The author signs a solicitation contract with the publishing house in order to ensure that the publishing house can publish the works that the author has not completed in the future, and reach an agreement on the specific publishing matters such as the name and remuneration of the reserved manuscripts.

## 2.2. Legal Characteristics of Copyright of Future Works

The legal characteristics of the copyright of future works mentioned here are mainly from the perspective of guarantee significance. The copyright of general works is intellectual property, which is a comprehensive right. In short, this comprehensive right is divided into two parts: personal right and property right. The personal right of copyright has personal dependence and reflects personality, and can not be used for exchange or transfer. The property right of copyright is not. It is transferable. Article 440 of the property right series of the civil code points out that the property right in copyright is pledged. It means that the pledge object in the right pledge can be pledged if it has the characteristics of property and assignment. The property right of works meets the three elements of the realization conditions of intellectual property guarantee: property, assignment and pledge. In practice, many scholars believe that the copyright of future works already has two of the three elements that can be guaranteed by the copyright of general works.

First of all, the copyright of future works has the characteristics of property. The completion of a work reflects the intellectual achievements of the creator. This intangible property has certain potential and expectable economic value, especially in the field of literature and art and film and television industry with the increasingly developed modern media.[1] Taking the film and television industry as an example, most of the future works are shown as film and television works that have started shooting but have not been completed. Although the future film and television works can not fully guarantee that the shooting will be completed one day in the future, with the advancement of the shooting process, the possibility of film completion increases and the probability of premature death gradually decreases. The market value of the shooting content of the film will become more and more obvious. Although there may be a shortage of funds in the later stage, creditors will basically make up for the lack of funds out of their own pocket. [2] In the future, the property value of the copyright of works far exceeds the imagination of creditors. This new type of copyright has strong vitality. In 2011, a domestic website purchased the exclusive right to broadcast new TV dramas in South Korea in the next few years; In 2017, a well-known Japanese writer joined China's future copyright plan. [3] Some unfinished works in the cultural industry have gradually entered people's vision. The action of some subjects to start first is not only the recognition of the level and ability of the object, but also reflects the infinite potential value hidden behind the copyright of future works, which "teaches a lesson" to those who are unwilling to recognize the economic value of the copyright

of future works. Generally speaking, the property of the copyright of future works is a kind of income that can be expected in the future, and its property value is unpredictable.

Secondly, the copyright of future works has the characteristics of alienation. First, at present, China's law does not specify whether the copyright of future works can be transferred, but a similar concept is mentioned in Article 19 of the copyright law, "the trustor and the trustee agree through a contract. Where there is no explicit agreement in the contract or no contract is concluded, the copyright belongs to the trustee. " This can be regarded as a reference to the copyright of future works in China's law, that is, if the two sides do not agree on the ownership of rights, the copyright of works belongs to the trustee. According to the above, the ownership of the copyright of future works can be solved, and it can be concluded that the copyright of future works has a certain transferability. Since one party signs a contract with the other party, this value has the attribute of transfer. Second, it is very common to sign the transfer and license contracts of future works copyright in the field of cultural industry. This is particularly prominent in the field of film and television works. In order to achieve the goal of pre-sale financing, producers sign pre-sale agreements with distributors to sell the distribution right of unfinished film and television works to overseas or buyers in other countries. This trade situation is also very common. [4] Third, according to the principle of "freedom without legal prohibition" in private law, when both parties conduct consideration transactions, they should fully respect their own expression of will, and the parties can freely exercise and dispose of the copyright of future works according to their own will. In this way, the copyright of future works has the second element of intellectual property guarantee conditions.

As for the third element in the guarantee conditions of intellectual property rights, in terms of pledge, China's theoretical and legal circles have not made it clear that the copyright of future works is guaranteed, so it is the key to consider setting the copyright of future works as the guarantee object.

At present, there are no specific provisions on the copyright of future works in China's laws, and the copyright of future works itself is uncertain. Taking it as the subject matter of pledge has become the focus of controversy in the academic circles. In theory, the view of denying the pledge of the copyright of future works as the subject matter of pledge is called "Negation" view, on the contrary, it is "affirmation" view. The author believes that the copyright of future works is possible to be pledged. This chapter takes the legal reference, social foundation, economic value and practical needs of the pledgability of the copyright of future works as the basis. The five levels of support in comparative law are used as support to demonstrate the legitimacy of copyright pledge of future works.

### **3. Negation of Copyright Pledge of Future Works**

"Negation" scholars believe that the copyright of future works has the same right nature as the patent application right, coupled with the immature background in all aspects of intellectual property pledge, the copyright of future works is not mortgageable. To sum up, the reasons for advocating non mortgageability are divided into the following aspects.

#### **3.1. Uncertainty of Future Works**

The subject matter of pledge should have the characteristics of certainty. The copyright of future works is similar to the patent application right. The two have something in common in some aspects. The patent application right does not have the characteristics of relative certainty of value. The object of pledge is not qualified because it cannot be specified, it is difficult to determine its value, the transfer of possession cannot be handled, and the pledge registration cannot be carried out. [5]

### **3.2. It is Difficult to Guarantee the Validity of the Copyright of Future Works**

Generally speaking, the subject matter of pledge must have effective ownership. Professor Liu Chunlin believes that both the patent application right and the copyright of deliverable ownership certificate, which can not guarantee the legitimacy and validity of the patent application right or the copyright of future works.[6] In addition, due to the inability to prove the ownership, it is difficult to distinguish the ownership of the works. For the pledgor, it is impossible to guarantee whether the third party will put forward some claims according to the law. This is not conducive to the pledgee. Of course, the pledgee is not willing to accept a right with uncertain value and unclear ownership.

### **3.3. There is no Copyright in Future Works**

Scholar Li Juan believes that future works can not be completed without the reference of "future copyright". It can not be future copyright but future works. Under the background that copyright has not been formed, there is no discussion on guarantee.[7]

## **4. Affirmation of Copyright Pledge of Future Works**

Even though there are many voices in theory against using the copyright of future works as the pledge object to obtain loans, scholars who hold the "affirmative theory" have always adhered to their own position for two reasons.

### **4.1. Potential Value of Copyright of Future Works**

In today's prosperous and developed market economy environment, people continue to pursue some substantive interests, but also pay more and more attention to the hidden potential value of something itself. As an unfinished work, the existence of future works is not a "vase" in the eyes of the public. If the pledge is set with the copyright of future works, and the pledgor fails to repay the debt at the expiration of his creditor's rights, the pledgee can enjoy the priority right to be compensated for the copyright of future works. Professor Wang Liwu and Professor Xie Liwei pointed out, If the copyright of the pledgor's future works has been transformed into the completed works during the period when the pledgor claims the rights, the pledgor can fully obtain funds to repay the debts by means of transfer. At this time, the pledge is lifted. If the pledgor's copyright has not been transformed and still exists in the form of future works, the pledgee can auction and sell the future works and have priority to be compensated. [8] According to the principle of relativity of contract, one party (assignee) is willing to buy future works based on the true meaning, which is like "calming agent" to the pledgee. At the same time, the copyright owner of future works can also use the borrowed funds to create works, which not only stimulates the enthusiasm of the copyright owner, but also is conducive to the dissemination and income of the works. Pledging the copyright of future works can promote the development benefits of the whole society and meet the development needs of market economy.

### **4.2. The Difficulty of Copyright Ownership Publicity can be Solved through Technology**

In view of the "Negation" view, if there is no public registration of the copyright of future works, it can not be pledged, and the pledgor can not guarantee the effectiveness of the pledged intellectual property. In the final analysis, it is the ownership publicity of the copyright of future works. There are preliminary solutions to this problem in Beijing, Shanghai and other regions. Taking Beijing as an example, an international copyright trading center in Beijing creatively put forward a new product - Copyright printing.[9] One of the biggest features of copyright printing is that it can be used as soon as it is seen, that is, it is authorized as soon as it is used. As a fast authorization transaction media mechanism, "copyright printing" is to establish a channel

between the original content of the copyright authorization contract and the authorized use. Future works can use this channel to confirm their rights and interests, which is a step closer to the pledge of the copyright of future works.

## 5. Comment on the Theoretical Disputes of Copyright Pledge of Future Works

In the pledge financing of cultural enterprises, the scope and types of pledge objects are single. When involving animation, film and television production, publishing and other businesses, enterprises have a long creation cycle for works. The production and dissemination of these works will require a lot of capital investment in the early stage of creation to support the final completion of works. Most of these cultural enterprises themselves are asset light enterprises. Apart from the main assets such as copyright and neighboring right of future works, there is no other property with physical value. For the pledgee, it is a normal phenomenon that he is unwilling to lend money to an enterprise with insufficient funds, uncertain risks of the pledge object and unable to accurately evaluate the value of the pledge object.

In terms of the theoretical disputes over the pledge of copyright of future works, scholars who hold the "affirmative theory" adhere to the attitude of "speaking with facts", and it is feasible to pledge the copyright of future works to a certain extent. On the issue of whether the copyright of works can be pledged in the future, the viewpoint of "Negation" is greater than that of "affirmation". Holding the affirmative vote to become the first person who dares to eat "crab" is also constantly struggling. Although its attempt is slightly immature, it is still expected. The conflict between negation and affirmation is whether the copyright of future works can be qualified. Scholars who hold the "negative theory" view take a cautious attitude towards this, and believe that taking the copyright of future works as the pledge object is nothing more than adding insurance to insurance, and commercial banks and other financial institutions as lenders, so the uncertainty of such objects will also be deterred. The scholars who hold the "affirmative" view take a relaxed attitude of making up for the deficiency in real time, effectively refute the negative view to a certain extent, and emphasize that the copyright of future works can be pledged. The opinions of affirmative scholars accelerate the speed of the pledge of copyright of future works.

The author believes that it is feasible to take the copyright of future works as the pledge object. The blank in legislation and the debate in academic circles on whether the copyright of future works can be pledged are necessary. Based on the development trend of world intellectual property rights and the promulgation background of China's intellectual property strategy, it is of great benefit to recognize that the copyright of future works, a new type of work right, can be pledged. Moreover, from the perspective of legal level, social reality basis, economic value of future works copyright, practical needs and the support of comparative law, future works copyright can be pledged, which will be discussed in another article.

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