

Copyright Protection of Animation Characters

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Abstract: Well-known animation characters can often bring huge economic benefits, but at present, there are frequent imitations of free-riding on animation characters. Although the introduction of commercialization rights in foreign countries may be an effective protection method, but at the moment when commercialization right cannot be promulgated in short term and the protection of animation characters is urgent, it is more effective to use the Copyright Law as the main protection basis. At the legislative level, animation characters can be regarded as a new category of works. When judging whether it constitutes an infringement, the appearance image of the character should be taken as the core, and a comprehensive judgment should be made in combination with factors such as personality and name. As for the term of protection, trademark rights can be used to make up for the lack of copyright protection term, and the same character whose appearance has changed greatly can be regarded as a new work to extent its term of protection.

Keywords: Animation characters, Copyright, Commercialization rights

1 Preface

With the development of the economy, the value of virtual characters has become more and more prominent in the current society. However, the protection of virtual characters is far from enough in China's current legal system. This

would damages the author's creative enthusiasm to a certain extent and hinders the development of related cultural industries. Today, the market is flooded with cheap imitations of well-known characters, which is a typical example of insufficient protection.

In this context, scholars have put forward suggestions, the most convincing of which is to imitate foreign countries and introduce *commercialization rights* to protect the commercial value behind the characters. Commercialization rights are an ideal protection method. It can provide a comprehensive protection system, and the idea behind it is also consistent with the protection of characters. But so far, China still has no legislation on commercialization rights even it is common for famous characters to be "hitchhiked" in the market. Therefore, it is necessary to discuss how to protect the characters under current legislative system. In terms of classification, virtual characters are composed of three categories: literary characters, audiovisual characters and animation characters.²⁾ This article mainly discusses the copyright protection of animation characters.

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2) See Wu Handong: *Commercialization of Image and Commercialized Image Right*, contained in *Law Science*, No. 10, 2004, p. 78.

2 Definition of Animation Characters

2.1 Controversies about Definition

There is a view that the essence of animation characters is a visual image that can bring a clear and fixed sensory experience to the audience. The image is composed of lines and colors, which may be drawn by computer or by hand.³⁾ This definition only emphasizes the appearance characteristics of an animation character, but ignores its inherent character factors. In fact, the reason why an animation character is loved by the audience is not only because of its pleasing appearance, but also largely because of its personality.

Animation character, as a kind of virtual character, should be composed as a whole, consisting of three parts: name, appearance specifically including clothing, color matching, etc. and personality.⁴⁾ The name is the specific reference of the character. Some authors may also refer to the names of historical figures and adopt puns to reflect the personality of the characters when naming them. Therefore, the characters themselves contain the author's thinking about this role, which is the crystallization of the author's intellectual achievements. The appearance is the body of a character, which can often give the audience the first impression of a character. And the disposition is the soul of an animation character, which often largely determines the fate and plot direction of a character in the work. Without any one of these factors, a character

cannot be called a complete animation character. Therefore, when defining animation characters, we should take into account the above three components of them. At the same time, the differences between animation characters, literary characters and audio-visual characters shall be emphasized. In this case, it would be more comprehensive to define animation characters as virtual images composed of colors and lines in animations, comics, games, etc., having certain personality traits or other characteristics, and being the intellectual achievements of the author.

2.2 Characteristics of Animation Characters

Animation characters are tangible. This tangibility is relative to literary characters. Literary characters are images composed of text descriptions. As the saying goes, "there are a thousand Hamlets for a thousand readers". No matter how detailed and vivid the description is, characters in literary works will have different impressions on different readers. Take *the Romance of the Three Kingdoms* as an example, this masterpiece has created many impressive generals, and it has also spawned many works of animation characters in animation and games. However, different works always have different portrayals of the same characters. Even famous characters such as Cao Cao and Guan Yu would have different specific images in different works. In other words, the image of a literary character is invisible and not fixed. But animation characters

3) See Chen Qi, Long Wenmao: *Copyright Law Protection of Fictitious Characters in Literary Works*, in *Technology and Law*, No. 03, 2018, p. 67.

4) See Tan Xuanying: *A Brief Analysis of the Copyright Law Protection of Animation Characters*, in *Journal of Hubei University of Economics (Humanities and Social Sciences Edition)*, No. 10, 2011, p. 101.

are different. An animation character is outlined by clear lines and images, therefore, its image in the audience's mind is often determined. This image will not vary with audiences, and has tangibility and relative stability.

Animation characters have unique source of value. Compared to audio-visual characters, animation characters have strong virtuality. Audio-visual characters are played by real people, such as James Bond. The shaping of an audio-visual character, in addition to author's design, also incorporates the understanding and interpretation of the character by the real player himself. Therefore, the value of an audio-visual character usually includes the personal value of its performer. Take Heath Ledger, who once played the role of the villain Joker in *Batman* as an example, he used his superb acting skills to convince most of his audience. After his death, fans even lamented "After Heath Ledger, there will be no more clowns". This incident is enough to reflect the actor's influence on character. But, animation character is different. It is unique because there are no real person player and its value basically comes from its author's interpretation.

Animation characters are independent from the works. Usually, an animation character is part of a work at first, but it is independent from the work to some extent. This independence is reflected in both concept and commercial value. For example, the game *Fate/stay night* shaped the animation character Gilgamesh, and then this character appeared repeatedly in various animations and theatrical movies of the series, which is extremely popular. Conceptually

speaking, audiences would keep the characters image in their hearts even when they have forgotten the plots. From the perspective of commercial value, fans tend to buy key chains, figures and other products published based on this character. This kind of commercial attraction is actually beyond the scope of the original work itself, but brought by the character independently.

Animation characters are holistic. As mentioned earlier, an animation character is not a simple line image, but a unified whole composed of name, appearance and personality. Without any of them, the animation character is incomplete, and it is therefore difficult to obtain legal protection. Among the three, its name and appearance are often the basis. Audiences often begin to recognize a specific character from these two elements, and the personality constitutes its soul. The personality here should be understood in a broad sense. In addition to the personality characteristics we understand daily, mantras, classic lines, and etc. should also be included. For example, in *JoJo's Bizarre Adventure*, the author has created many classic characters, and these characters are loved largely because of their classic lines. These lines are not only talked about by readers, but also some other works who have borrowed or quoted these lines to amuse their audiences.

3 Legal Protection Model of Animation Characters

The protection of animation characters is often discussed from the perspectives of commercialization rights, the Trademark Law, the

Anti-Unfair Competition Law and the Copyright Law.

3.1 Protection of Commercialization Rights

At present, there are still academic controversies on commercialization rights based on scholars' different understanding of it. For example, in terms of definition, there is no consensus on whether to create this right through legislation or judiciary, or to define it from the perspective of personality rights theory.⁵⁾ However, it must be admitted that the commercialization right is an ideal protection model. It focuses on protecting the commercial value behind the character, and the scope of protection also covers advertisement, product decoration, adaptation to other works, copy as three-dimensional image and other commercial use⁶⁾.

Although the protection of commercialization rights is the most ideal model, however scholars still debate. On the one hand, they cannot reach an agreement on various contents. On the other hand, there is no relevant basis for commercialization rights in China. At the same time, there are a large number of free-riding behaviors for well-known animation characters in society. Therefore, the introduction of commercialization rights does have theoretical significance. But it is even more necessary to explore how to protect right holders of animation character under current legal

framework.

3.2 Protection under the Trademark Law

The use of trademark rights to protect animation characters has its merits. First, trademark protection is sustainable since its term can be continuously extended through applications.⁷⁾ Second, the use of trademarks to protect the ownership of animation characters is clear and has less prone to disputes. Third, the basic function of trademarks is to facilitate consumers to identify the source of related goods, thereby facilitating consumers to choose. Therefore, registering an animation character as a trademark also enables consumers to quickly confirm that the product has a certain relationship with the right holder of the animation character, and then purchase the product.

However, the use of trademarks as the main means of protecting animation characters also has important disadvantages that cannot be ignored. First, trademark registration system in China provides limited protection to unregistered trademarks.⁸⁾ When a right holders fail to complete trademark registration, he would not be protected under the Trademark Law. This might raise the threshold to protect animation characters. Otherwise, administrative procedures required would bring administrative burden to right holders. Second, the core essence of trademark

5) See Zhang Peng: *Historical Evolution and Theoretical Analysis of Commercialization Rights in Japan*, in *Intellectual Property*, Issued 05, 2016, p. 115.

6) Same note 2, p. 79.

7) See Wang Xiaofen: *Analysis on the Protection of Commercialization Rights and Interests of Animation Characters from the Perspective of Trademark Law*, in *Commercial Times*, No. 11, 2014, p. 110.

8) See Zhang Yeyu: *Research on the Legal Protection of the Commercialization of Virtual Characters*, in *Reform and Opening Up*, Issued 16, 2018, p. 20.

protection is to prohibit others from using the same or similar trademarks on the same or similar goods. Well-known trademarks can also obtain cross-class protection. Compared with the various free-riding behaviors of characters in real life, this prohibited behavior seems too powerless. In real life, many acts are quite different from the pattern of infringement in the field of trademarks. For example, a infringer might sell a famous character as a three-dimensional model without permission. In another example, actors might make simple changes to the original characters and apply them in their works. It is hard to say that this kind of behavior belongs to the use in the sense of the Trademark Law, and it is hard to say that it is in line with the behavior pattern prohibited by the Trademark Law, even though it actually violates the interests of the real right holder. Third, what the Trademark Law protects is often a specific graphic. Under the Trademark Law, due to the breakthrough of the traditional visibility, sound can also be registered as a trademark. However, no matter how the Trademark Law expands its scope, the ultimate protection of the trademark law is the specific graphic or text registered as a trademark. If the actor makes corresponding changes to the animation characters, for example changing a certain character to a Chibi version, its rights holders will face obstacles when asserting

their rights.

Overall, although it is acceptable to adopt the Trademark Law to protect animation characters, it will face insurmountable obstacles. Therefore, this method of protection can only be used as a supplement rather than as the main method of protection.

3.4 Protection under the Anti-Unfair Competition Law

The Anti-Unfair Competition Law provides supplementary protections when there is no regulation under intellectual property law.⁹⁾ Some scholars also regard its relationship with the protection of intellectual property law as parallel protection.¹⁰⁾ But no matter how the relationship between the Anti-Unfair Competition Law and intellectual property law is understood, the Anti-Unfair Competition Law can always be the legal basis for protecting animation characters. Especially in current judicial practice, even if the infringer has committed acts other than those listed in Chapter Two of the Anti-Unfair Competition Law, the court can still adopt the general provisions of Article 2 of the Law¹¹⁾ to make a corresponding judgment. Cases that adopt the protection mode in the Anti-Unfair Competition Law have been reflected in a recent influential case: "Jin Yong v. Jiangnan".

9) See Zheng Chengsi: *Anti-Unfair Competition—Additional Protection of Intellectual Property Rights*, contained in *Intellectual Property*, Issued 05, 2003, Page 3.

10) See Zhang Weijun: *A View of the Relationship between Unfair Competition Law and Intellectual Property Law from the Case of Jin Yong v. Jiangnan*, in *Intellectual Property*, No. 10, 2018, pp. 18-19.

11) Article 2 of Anti-Unfair Competition Law: Businesses shall, in their production and distribution activities, adhere to the free will, equality, fairness, and good faith principles, and abide by laws and business ethics. For the purposes of this Law, "act of unfair competition" means that in its production or distribution activities, a business disrupts the order of market competition and causes damage to the lawful rights and interests of the other businesses or consumers, in violation of this Law.

However, the protection provided by the Anti-Unfair Competition Law is also insufficient. First, this protection is more of a negative and passive protection. The Anti-Unfair Competition Law can only prohibit the actor from implementing the corresponding behavior, and give corresponding punishment. It cannot give corresponding rights to right holders. Secondly, there is no clear regulations of protection to animation characters in the Anti-Unfair Competition Law. Therefore, due to its generality, protection under the Anti-Unfair Competition Law must be resorted to the principled provision under Article 2 which could bring uncertainties to the right holders when asserting their rights and filing lawsuits.

4 Thoughts on the Application of the Copyright Law

As mentioned above, to be protected under the Copyright Law, following issues need to be clarified.

4.1 Reasons for Choosing the Protection under the Copyright Law

The Copyright Law could be the most suitable law to protect animation characters in the current legal system for the following reasons. First, the objects of protection of the Copyright Law are specific works such as videos, games, and animations. The production and survival of animation characters are also inextricably linked with the works themselves. The two have a

natural fit. Second, the protection provided by the Copyright Law is automatic protection without application. It is more convenient for right holders and could lower the protection threshold. Third, compared with the relatively single behavior prohibited by trademark protection, copyright, as a bundle of rights, protects a variety of behaviors, which can better meet the needs of right holders and is more suitable for a variety of social environments.

It must be recognized that although the protection of the Copyright Law has several advantages, there are certain differences between animation characters and traditional works such as books, paintings, and sculptures. A number of issues below should be clarified under current legal system.

4.2 Nature of Protection for "New Works" of Animation Characters

To adopt the Copyright Law protection, the first problem to be solved is whether animation characters belong to works and what type of works they belong to. For an intellectual achievement to constitute a work in the sense of the Copyright Law, it needs to have two characteristics: originality and can be reproduced in a tangible form.¹²⁾ Originality requires the right holder to create the work himself, instead of producing the work through plagiarism, which is a kind of individual expression.¹³⁾ Originality has two meanings: the work should be completed independently

12) Article 2 of the "Regulations for the Implementation of the Copyright Law: Works referred to in the Copyright Law refer to intellectual achievements that are original in the fields of literature, art and science and can be reproduced in a tangible form.

13) See Luo Tianwei: *Research on the Copyright Issues of Fanworks—Taking The Boys Here as an Example*, in *Intellectual Property*, Issued 08, 2017, page 66.

and should have a certain level of creativity.¹⁴⁾ Combinations of elements such as costumes and character designs of animation characters can be considered original if they are independently completed by relevant subjects and have a certain degree of creativity. It is worth noting that if the image of an animation character is too ordinary, such as just a general "passer-by" whose components are a combination of some common elements. For example, a character wearing a simple white shirt and jeans itself, who is only for the simple needs of the plot, may not meet the requirements of originality and thus cannot constitute a work. That is, characters must be sufficiently specific and have sufficient personality to be protected by copyright.¹⁵⁾ At the same time, animation characters can be copied from plane to plane, such as simple copy, photocopying, etc., and can also be copied from plane to three-dimensional through technical means, such as making comics and animation characters into three-dimensional models, etc. Therefore, they are reproducible, which conforms to the concept of works and belongs to works.

There is a view that some judicial precedents in China show that to be regarded as a work protected by the Copyright Law, it must meet the requirement of independence. However, a character is often dependent on the work, so

it is very difficult to meet the requirements of independence.¹⁶⁾ For some "passer-by" characters appearing in the works, their existence is often to serve the plot of the work, and it is passed by. But there are also many characters in the works, mainly the important protagonists and supporting roles. Although they rely on the work when they are formed, they can be completely separated from the work and become independent existences after formation. An important example is fan works created by fans in which the original characters are used as prototype. Fan works are creations based on the original works with the addition of the author's own creative elements.¹⁷⁾ In some fan works, the similarities between the new work and the original one are only reflected in the same characters. The plot and so on have little to do with each other. For example, stripping the characters in a comic with an ancient theme and describing their daily life in a modern city is enough to show the independence of the characters. At the same time, not to mention that well-known animation characters have independent commercial value, sometimes even surpassing the work itself.

In terms of the types of works, Article 3 of the Copyright Law adopts the method of *enumeration+bottom line* to specify the types of works.¹⁸⁾ The carrier of animation characters

14) See Zhang Huibin, Liu Dikun: *How to Identify the Originality of Sports Event Programs?—Centering on the Production of Sports Event Programs*, in *Sports Science*, Issued 06, 2018, p. 76.

15) See Lu Haijun: *Fan Creation, Fan Works and Copyright Responsibility—Thoughts Aroused by the Case of The Boys Here*, in *China Publishing*, No. 11, 2017, p. 54.

16) See Niu Qiang: *Fixation and Copyright Protection of Fictitious Character Images in Literary Works*, in *China Publishing*, Issued 19, 2018, p. 44.

17) See Pang Mengmiao: *Exploring the Copyright of Fanworks*, in *Publishing Wide Angle*, Issued 17, 2018, page 41.

18) Article 3 of the Copyright Law: Article 3 For the purpose of this Law, the term "works" includes works of literature, art, natural science, social science, engineering technology and the like which are created in the following forms : (1)

is diverse, which is the main reason for the difficulty in classification. Some people think that it should be classified as a work of art.¹⁹⁾ However, classifying a character as a work of art only sees the appearance of the character, while ignoring the connotation such as the personality of the character. The Implementing Regulations of the Copyright Law of the People's Republic of China provides relevant provisions and lists what constitutes a fine art work.²⁰⁾ The paintings, sculptures, calligraphy and other works listed in the regulations all focus on the expression of appearance, that is, the *aesthetic meaning* from the perspective of *physical beauty*, which in turn makes the viewer feel beautiful. When defining some new things, such as musical fountains, as works of art, the aesthetic meaning in the sense of beautiful appearance of this new thing is also required to occupy the main position.²¹⁾ A successful animation character is an organic and unified whole composed of name, appearance, and personality, which almost forms an existence similar to people in real life. In addition to physical beauty, its personality are also indispensable, so they can differ from ordinary works of art.

There are precedents that recognize and protect character images as works of art, but this is more of a helpless move when there is no

better choice. For example, in the dispute over the image of "Ultraman" between Wuhan Baijia Supermarket Co., Ltd. and Shanghai Century Huachuang Cultural Image Management Co., Ltd., the court determined that the character image is a work of art, and there are two elements constituting infringement: first, the appearance of the defendant's product is similar to that of the plaintiff's character image, and the helmets, eyes, and ears of the two are similar; second, the defendant's products and the plaintiff's characters share a similar connotations: justice and bravery. If it is really seamless to protect animation characters as works of art, the court only needs to raise the first point when arguing infringement. But in fact, the convincing force of just putting forward the first point is obviously not as strong as adding the second point. Therefore, animation characters not only have the external form of ordinary art works, but also have inner personality that ordinary art works do not have. The court finally mentioned that "external image and personality connotation constitute a complete work of character". Since China's current laws and international conventions do not stipulate the copyright of character images, character images can only be protected as works of art.²²⁾ It would be inappropriate to characterize it as a film or

written works ; (2)oral works ; (3)musical, dramatic, quyi and choreographic works ; (4)Works of fine art and photographic works ; (5)cinematographic, television and video-graphic works ; (6) drawings of engineering designs and product designs, and descriptions thereof ; (7)maps, sketches and other graphic works ; (8)computer software ; (9)other works as provided for in law and administrative rules and regulations.

19) Shanghai Higher People's Court (2009) Hu Gao Min 3 (Zhi) Zhong Zi No. 7 Civil Judgment.

20) Article 4 clause 8 of The Implementing Regulations of the Copyright Law of the People's Republic of China: works of fine art are two-or three-dimensional works created in lines, colors or other medium which, when being viewed, impart aesthetic effect, such as paintings, works of calligraphy, sculptures and works of architecture.

21) See Yuan Bo: *Looking at the "Background Clause" from the First Fountain Copyright Dispute Case*, in *China Intellectual Property News*, Issued July 13, 2018, page 9.

22) Hubei Higher People's Court (2012) E Min 3 Zhong Zi No. 27 Civil Judgment.

film-like work as well. On the one hand, many animation characters are presented on graphic comics, which obviously do not belong to former category. On the other hand, for some game characters, there is no "series of pictures with or without sound" in the performance. Therefore, it is very far-fetched to understand it as a film and film-like works.

Among the works listed in Article 3 of the Copyright Law, it is difficult to find a specific classification of animation characters. So does the provisions of "other works stipulated by laws and administrative regulations" in Article 3, Clause 9 of the Copyright Law apply? This is also very difficult. Because there is a logical contradiction in Clause 9, Article 3 of the Copyright Law. To incorporate a category of works into Clause 9, Article 3 of the Copyright Law, it means that laws and administrative regulations first need to list them as a category of works. And if there is such a regulation, the best way to specify it is to list it in the specific category of works in Article 3 of the Copyright Law. In fact, Clause 9, Article 3 of the Copyright Law is also a catch-all clause that is rarely applicable in reality.

To sum up, it is impossible to find the position of animation characters in the specific types listed in Article 3 of the Copyright Law, and it is also impossible to adopt the bottom-up provisions of Clause 9, Article 3 of the Copyright Law. There should be a separate category of items in Article 3 to include animation characters.

4.3 Infringement Judgment of Animation Characters

The dichotomy between thought and expression is an important idea throughout the Copyright Law. The Copyright Law only protects expression but not the ideas behind it, so as to avoid the monopoly of ideas and the damage to social public interest. Although it is very difficult to draw a clear line between thought and expression, it is still necessary to adhere to this principle in judicial practice, otherwise it will be at a loss. After animation characters are determined as a class of works, when judging whether they constitute infringement, it is necessary to distinguish thoughts and specific expressions of animation characters. As described above, the composition of an animation character often includes three parts: name, appearance and personality. The distinction between thought and expression should also be analyzed from these three aspects. Among them, the appearance of a character should be the center of the judgment, because appearance is the most important basis for the general consumers to identify a character, and appearance as an expression is less controversial.

Imitation of single element. When infringer imitates a single part of the three elements, it is necessary to specifically analyze which element the infringer imitated. Firstly, the name of the animation character. When the infringer only learns to imitate the name of a animation character, and has nothing to do with the appearance and personality, it should generally not be considered as an infringement of the

copyright of the original character. When the name exists independently of the appearance and personality, taking it as the object of protection is suspected of over-protection. In particular, names of many roles may be borrowed from historical figures, which may lead to a large number of characters with the same or similar names. If they are protected, they may generate monopoly interests and violate the public interest of the society. In short, copyright protection is powerless for mere names.²³⁾ Secondly, the personality of animation characters. When the infringer learns to imitate the personality of the character, but has nothing to do with the name and appearance, it should not generally be deemed to have infringed the copyright of the original character. Personality types often have some stereotypes in works, and there will be some characters with similar personalities in many works. For example, both Zhang Fei in *the Romance of the Three Kingdoms* and Li Kui in *Water Margin* are reckless and righteous. In another example, tsundere characters often appear in Japanese anime games. In addition, there are personalities such as righteousness, boldness, calmness, insidiousness and cunning, arrogance, righteousness and evil, etc. The design of these characters should belong to the category of thought. Imitating it alone is not easy to identify as an infringement of the copyright of the character. Thirdly, the appearance of animation characters. The simple imitation of the appearance undoubtedly infringes the copyright

of the character, even if the infringer changes its name and personality. Currently, the court basically judges whether the infringement is based on the appearance. However, imitation here should be understood in a broad sense and cannot be simply understood as printing, copying, rubbing, recording, video recording, dubbing, and remaking as mentioned in the Clause 5, Article 10 of the Copyright Law. Subtle changes to some elements, making it from a two-dimensional image to a three-dimensional model, or even making its image into a Chibi version image should be considered as imitation of the appearance and constitute an infringement of the copyright of the original character. In *Wenzhou Qibao Children's Products Co., Ltd. v. Universal Pictures (Shanghai) Trading Co., Ltd.*, the court held that the differences between the image used by the defendant and the art work involved in the case (Minion) was that the defendant changed the color of the goggles and remove the body and limbs. The two still constitute a substantial similarity, thus the infringement is established.²⁴⁾ At the same time, the behavior of merely imitating the appearance to change the personality may also constitute an infringement of the right of adaptation under Copyright Law. In a specific infringement case, it is very difficult to judge whether there is a substantial similarity between two animation characters, because an animation character has independent meaning and value, relying on but not attached to the original work.²⁵⁾

23) See Li Gexia: *Re-discussion on the Commercialization of Roles*, in *Intellectual Property*, Issued 03, 2017, page 18.

24) Hangzhou Intermediate People's Court (2019) Zhe 01 Min Zhong No. 1501 Civil Judgment.

25) See Chen Mo: *On the Boundary of Overlapping Protection of Cartoon Character Rights*, in *Journal of Henan University (Social Science Edition)*, 2013 No. 04, p. 35.

At the same time, "smart" imitators often adopt fragmental imitation or partial imitation to copy the character's set appearance.²⁶⁾ They only copied some of the key elements, and modified the details to avoid the possibility of infringement. In order to solve these problems, there should be such an awareness that not only judges have the right to evaluate and judge works, consumers and users should also be qualified to make corresponding judgments.²⁷⁾ When judging whether there is an imitation of appearance or substantial similarity in other words, a user judgment mechanism can be introduced. Under this mechanism, certain user group is selected to judge an accused work. This group should be the target user group of the original work. If they can easily identify an accused work as the original character, then they are likely to purchase the accused work or merchandise based on their love for the original character, which is also in line with the original intention of protection. Therefore, if the target user group of the original work can easily determine that the character of the accused work is derived from the original work, then it can be preliminarily determined that the accused work constitutes an imitation of the original character.

Imitation of double elements. Firstly, imitation of "appearance+personal characteristics" or imitation of "appearance+name". Since the mere imitation of the appearance can be considered as an infringement of the copyright

of the original character, then the imitation of the character and name on this basis should be deemed as an infringement of the copyright of the original character.²⁸⁾ In fact, imitating the name or personality on the basis of imitating the appearance will also account to the above-mentioned confusing judgment, and then be identified as infringement. In addition, according to the idea of integrating animation characters, when determining infringement, if the two characters share a high degree of similarity in personality, the requirements for similar appearance can be lowered. This can be understood as imitating the character to a certain extent to "complement" the requirements for similar appearance. Secondly, imitation of "name+personality". Simple imitation of the combination of name and personality is often difficult to be identified as infringement, the reason is as mentioned above. The name is often not protected by copyright, while the personality usually constitutes an idea. Therefore, the simultaneous imitation of the two is not suitable for copyright protection. However, the stigmatized image transformation of the original character may constitute an infringement of the right of adaptation. For example, a cartoonist portrayed the character A in his comics, with a tall and mighty appearance, often accompanied by a falcon. However, another cartoonist also portrayed a character named A in his works who shares the same personality characteristics but it

26) See Li Fumin: *Legal Protection of Fictitious Characters in Works*, in *Social Scientist*, No. 05, 2012, p. 97.

27) See Yang Ling: *Copyright, Plagiarism and Originality in the IP Era*, in *Journal of Guangxi Normal University (Philosophy and Social Sciences Edition)*, Issued 06, 2018.

28) Liu Mengyu: *Research on the Copyright Protection of Animation and Cartoon Characters in my country*, in *Cultural Studies*, Issued 10, 2022.

is described as short and wretched, and is often accompanied by a mouse. This situation may constitute a stigmatized adaptation and constitute a violation of the right to adapt.

Imitation of three elements. This situation means that the infringer imitates the appearance, personality and name of a animation character at the same time, which is the most likely state to constitute infringement. In the actual judgment, it is necessary to grasp the overall characteristics of an animation character and adhere to the rules of the overall judgment to determine whether it constitutes an infringement of the copyright of the original character.

4.4 Term of protection

Copyright has a corresponding term of protection. Once the term expires, except for personal rights such as authorship rights, copyright property rights and publication rights will no longer be protected. Therefore, there is a view that adopting copyright protection is not conducive to the comprehensive protection of characters.²⁹⁾ The point of view of this article is contrary to the above one.

The existence of a term of protection conforms to the basic concept of copyright law. From the perspective of legislative philosophy, the reason why copyright stipulates the corresponding protection term is to balance the interests of creators and the public. While protecting creators, copyright law also determines the time when a

work falls into public domain to provide good and abundant works to the public. The same is true for copyrights of characters. Excessive emphasis on the exclusive protection of characters will only strengthen monopoly interests and cause an imbalance between the interests of creators and the public. Therefore, there is no need to feel sorry for this.

Copyright protection can complement trademark law. Adopting copyright as the main means of protection does not mean giving up other means of protection. The subject that owns the rights to the characters can register trademarks for supplementary protection before the copyright expires. Moreover, incorporating animation characters into the framework of copyright protection can also prevent others from preemptively registering trademarks. The Trademark Law stipulates that registered trademarks cannot conflict with prior rights.³⁰⁾ If others want to preemptively register a trademark of an animation character, the right holder can claim that the trademark conflicts with the copyright of his previous animation character, and then claim the rights. Right holders could benefit from trademark protection as well.

A new image of the same character can be considered as a new work. It is common that the image and character settings of many characters will change over time. Take Megatron in Transformers as an example, he has different character images in different historical stages.

29) See Wang Jiayi: *Commercial Protection of Virtual Character Image*, in *Knowledge and Action*, 2018 No. 04, p. 56.

30) Article 9 of the Trademark Law: Any trademark in respect of which an application for registration is filed shall be so distinctive as to be distinguishable, and shall not conflict with any prior right acquired by another person.

When this change reaches a certain level, especially when the appearance as an important judgment standard changes, the character is likely to be regarded as a new work. The term of protection of the new work shall be recalculated to extend its term of protection.

5 Conclusion

In the current society, the protection of animation characters is urgent. Under the circumstance that the commercialization right cannot be promulgated in short term, neither the Trademark Law nor the Anti-Unfair Competition Law can achieve the best protection effect. The best effect could be achieved by treating animation characters as a new class of works and adopting the Copyright Law for protection.