

# Analysis of Hot Legal Issues in Art Creative Industry

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**Abstract:** The legal issues of real right in art and creative industry mainly focus on the form of joint ownership and the joint disposition and income rights. The legal problem of intellectual property in the art and creative industry is mainly the legal protection of ‘creativity’, and on this basis, explore the economic value that can be realized by intellectual property centered on ‘creativity’. On the one hand, the financial legal issues in the art and creative industry are restricted by laws and regulations, on the other hand, the competent authorities often make temporary legal documents to intervene in time. All kinds of transactions in the art and creative industry must also strictly abide by the provisions of various laws, regulations and rules. The legal problem of intellectual property in the art and creative industry is mainly the legal protection of ‘creativity’, and on this basis, explore the economic value that can be realized by intellectual property centered on ‘creativity’. On the one hand, the financial legal issues in the art and creative industry are restricted by laws and regulations, on the other hand, the competent authorities often make temporary legal documents to intervene in time. All kinds of transactions in the art and creative industry must also strictly abide by the provisions of various laws, regulations and rules.

**Keywords:** Art Creative Industry; Real Right; Intellectual Property Rights; Financial Law.

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## 1. Artistic and Creative Industries

The term ‘arts and creative industries’ is used in this article to refer to the arts and design industry in general, and in a similar vocabulary, ‘creative industries’ refers to ‘those enterprises that derive their growth momentum from the creativity, skills and talents of individuals, and those activities that create potential wealth and employment opportunities through the exploitation of intellectual property rights’ [1]. ‘The creative industry includes the content of production activities such as design, research and development, and manufacturing, as well as the general service industry in the traditional three industries, and the content industry related to high-tech; As well as the so-called fifth industry related to psychosomatic service activities such as art, culture, information, leisure and entertainment’[2]. Another similar term ‘cultural industry’ or ‘cultural and creative industry’ also has a similar meaning to the concept, and relatively does not include high-tech industries, but refers to a wider range of cultural concepts. The more popular words -- ‘art industry’ and ‘design industry’ overlap each other, and art and design are very similar in theoretical research, practical operation and market evaluation, especially in the recent trend of combining with finance and the Internet. Popular terms such as ‘crowdfunding,’ ‘art derivatives,’ ‘blockchain,’ and ‘artificial intelligence’ also appear in the art and design field at the same time, so it will be more meaningful to study the ‘art creative industry’ as a whole.

## 2. Legal Issues of Real Right in Art and Creative Industry

In the development of China's art industry, several types of art property rights share-based trading modes have emerged, including the share-based securities form of Tianjin Cultural and Cultural Exchange, the equity splitting mode of Shenzhen Cultural and Cultural Exchange, and various beneficial attempts of various trading platforms, and the combination of blockchain technology has also produced the current popular NFT art [3]. Although the early attempt of the quota model is

not ideal, its role in promoting the culture and art industry, as well as the promotion of public investment and consumption cannot be ignored. By lowering the capital threshold to enter the art market, the share-based model combines the mass market with the high-end art market, bringing a large number of social funds and consumer groups to the art industry, and providing the public with high-end art consumption and a wealth of investment and financial products. This has a very positive significance for the prosperity of the art industry, to meet the spiritual needs of the public, and to increase the property income of the people.

One of the most basic questions of the quota model is: what kind of object can be ‘quota’. The property rights of art products, including the property rights based on the material form of art products and the intellectual property rights based on the immaterial form of art products, are the main objects that can be divided into shares. The existing practice of share-tization is to split shares based on the property right of artworks, which is also in line with the unique characteristics of artworks to some extent, but it often relies on the realization of the value of artworks only on the difference in the physical sale of artworks -- the owners of shares cannot really claim ownership of artworks, and their ownership is virtual. It may be a luxury for the owners of the share to even look at the art. Therefore, in the research of share-based art products, it is necessary to detail the common form of property rights, disposal principles, income and transaction rules under the legal framework.

Under the legal framework, co-ownership is divided into co-ownership by shares and joint co-ownership (Article 93 of the Property Law), Article 94 of the Property Law stipulates that ‘co-owners in shares enjoy ownership of the common immovable property or movable property in accordance with their share’, and Article 95 of the Property Law stipulates that ‘joint co-owners enjoy joint ownership of the common immovable property or movable property’. Generally speaking, the co-owners of the joint property by share can claim disposal, income and other rights of the joint property, while the co-owners of the joint property need the consent of all the co-owners when disposing of the joint property or

making major repairs. Article 97 of the Property Law stipulates: 'Any disposition of the jointly owned immovable property or movable property or any major repair of the jointly owned immovable property or movable property shall be subject to the consent of the co-owners or all the co-owners who hold at least two-thirds of the shares, unless otherwise agreed between the co-owners.' According to the spirit of the General Principles of the Civil Law and the Contract Law, of course there is an agreement from its agreement, and the absence of an agreement is according to the law, so there can also be an agreement between the joint owners. In the specific practice of art 'share-based', the shared-share mode should be more suitable for the requirements of the market. People who hold shares are not familiar with each other, and they only get together because of joint investment in art, in fact, they lack a common emotional basis. However, in special circumstances, in order to prevent capital from disposing of art at will, The agreement of joint ownership and the explicit agreement on the disposition and other acts in the co-ownership contract can also be a way to protect rights.

How to withdraw the participants is a complex problem in the practice of art 'quota', as has been clearly pointed out in various studies of 'quota', if there is no withdrawal mechanism, then the so-called 'quota' is really just a symbolic speculation process. Withdrawal can be divided into individual withdrawal of participants, that is, individual participants transfer their share to others; And all participants withdraw, i.e. the artwork is transferred. In the practice of many exchanges, the individual withdrawal of participants is designed to be similar to the pattern of stock trading, but Article 101 of the Property Law stipulates: 'Co-owners by share may transfer their share of the common real estate or movable property.' Other co-owners shall have the right of first purchase under the same conditions. The provisions of this clause are actually contrary to the practice of buying and selling shares at will. The legislative spirit of the Property Law is to protect the integrity and unity of things, and the provisions here are similar to the preemption right of share transfer in a limited company. In this contradiction with practical operation, we can also see that the 'share' of art as an object is not actually accepted by the law, which will also be seen in the financial legal issues later in this paper.

For the withdrawal of all participants, Article 99 of the Property Law stipulates: 'Where the co-owners agree not to divide the joint real estate or movable property to maintain the joint ownership relationship, they shall comply with the agreement, but if the co-owners have significant reasons for division, they may request division; If there is no agreement or the agreement is not clear, the co-owners by share may request division at any time, and the co-owners may request division when the common basis is lost or there are significant reasons for division. Where damage is caused to other co-owners as a result of the division, compensation shall be paid.' Therefore, the withdrawal mechanism of art 'share' needs to be clearly agreed in the contract.

The research on the legal issues of art 'share' will bring typical reference value to the crowdfunding of art and design in the art creative industry, as well as the disposition and income of intellectual property rights of art and design.

### **3. Legal Issues of Intellectual Property Rights in Artistic and Creative Industries**

In the research of artistic creative industry, a core issue that cannot be ignored is the realization of intellectual property rights of artistic creative products. For mass-produced design creative products, creativity is the core value, and the importance of protecting creativity is self-evident. For works of art, in the current art finance practice, exploring the artistic creative value of works of art and developing the derivative value of its spiritual and cultural consumption is helpful to find the market trading rules beyond the physical works of art. Therefore, the research on how to protect and realize the intellectual property rights of artistic creativity will play a positive role in perfecting the current artistic creativity market. Such a research center is the legal protection of 'creativity', and on this basis, explore the economic value that can be realized by intellectual property centered on 'creativity'.

(1) The expression of creativity in art and design:

In the process of art and design creation, the various forms of 'creativity' include tangible and intangible, imperfect and perfect, staying in the idea and put into practical application and so on.

(2) Current legal protection of creativity:

There are various laws, regulations and treaties relating to the protection of ideas. At present, the protection of artistic creativity in our country mainly relies on the legal protection system of intellectual property rights centered on copyright, trademark right and patent right, and there are great differences in cost, economic utility and prescription among various right protection methods.

(3) How to incorporate various creative forms into the framework of intellectual property protection:

On the one hand, 'creativity' is essentially thinking, and according to the current legal rules, 'intangible' thinking cannot be the object of legal protection. 'Creativity' can only be protected by law through various realistic 'material' carriers. On the other hand, various creative forms should be divided and classified into the object of legal protection, that is, what kind of legal norms they are applicable to.

(4) Core creative ideas in art and design creation and corresponding intellectual property protection:

In the process of art and design creation, many ideas will be generated. For creators or artistic creative enterprises, it is necessary to distinguish which ideas are their core wealth, constitute their core competitiveness, and what ways to protect these ideas.

(5) Intellectual property interests and utilization of artistic design creativity:

Creativity has corresponding property rights under the protection of law, and the creators and enterprises of artistic creativity should consciously strengthen the protection of their rights in this respect and explore the economic value of creativity. On the other hand, the legal protection of creativity also provides a strong basis for the evaluation of the economic value of creativity, and will be of great help to all kinds of financial innovations targeted at 'creativity', such as new ways to promote the development of creative enterprises by investing in creativity and financing loans.

The characteristics of the law are very normative, and the legal provisions are often very clear and strict; Creativity is characterized by a strong leap, flexible and changeable. On the one hand, the specific form and content of creativity

should be strictly summarized under the legal framework; On the other hand, the legal protection of creativity should not harm the openness of creativity's generation and development process and the convenience of realizing the economic benefits of intellectual property.

#### **4. Financial and Legal Issues in the Art and Creative Industry**

The arts and creative industry and the financial sector are increasingly integrated, such as 'share' trading models, crowdfunding, art or design trusts, etc. This phenomenon can be seen as the art and creative industry is growing into an important part of the national economy and attracting the attention of capital and society. On the other hand, the financial and legal problems in the art and creative industry are becoming more and more prominent.

On the one hand, financial legal issues are restricted by laws and regulations such as the Law of the People's Bank of China, the Commercial Bank Law, the Negotiable Instrument Law, the Guarantee Law, the Insurance Law, the Securities Law and the Trust Law, etc. On the other hand, due to the rapid changes in the financial industry, the financial law involves a wide range of aspects. The competent authorities often need to make temporary legal documents such as 'decisions' and 'opinions' to intervene in reality in a timely manner.

Encouraged by the enthusiastic attention of the whole society, more than 20 cultural exchanges across the country have opened and launched similar products, which has formed a huge social risk. In 2011, The State Council made the 'Decision of The State Council on cleaning up and reorganizing All kinds of trading places to effectively Prevent financial risks', which stipulates: 'From the date of issuance of this decision, except for stock exchanges established according to law or trading venues approved by The State Council to engage in financial product trading, no trading venue shall split any equity into equal shares for public issuance, and shall not adopt centralized trading methods such as centralized bidding and market makers; The interest shall not be continuously listed in a standardized trading unit, and the interval between buying and selling or buying the same trading instrument after selling shall not be less than 5 trading days; Unless otherwise provided by laws and administrative regulations, the cumulative number of equity holders shall not exceed 200.' This effectively prohibits the share trading model, and also prohibits the opening of various cultural exchanges. With the exception of the exchanges in Shanghai and Shenzhen, plus a few later ones in Beijing and Chengdu, all are illegal. In this 'decision', the trading method is also agreed: 'The interval between buying and selling or buying the same trading instrument after selling shall not be less than 5 trading days', which is obviously to reduce the risk caused by speculation.

The limit of 200 people is actually the demarcated boundary of the Securities Law on public offering and private placement. Article 10 of the Securities Law stipulates: 'Public issuance of securities must meet the conditions prescribed by laws and administrative regulations, and report to the securities regulatory body under The State Council or the department authorized by The State Council for approval; Without approval according to law, no unit or individual may publicly issue securities. Under any of the following circumstances, it is a public offering: (1) issuing securities to

no specific object; (2) There are more than 200 persons who have issued securities to a specific target; (3) Other issuance acts as provided for by laws and administrative regulations. The non-public offering of securities shall not be made through advertising, public persuasion or disguised disclosure'. The main purpose of this regulation is to reduce social risk. According to the current legal provisions and relevant practices, it is very difficult for the financial innovation model of the art and creative industry to meet the requirements of public offering, and there are many restrictions on the form of private placement.

The important financial and legal issues in the art and creative industry are also reflected in the practice of art trust funds. When the art market is hot, all kinds of art trust funds also thrive, but when the art market enters a calm adjustment, these art trust funds face the risk of not being able to recover their costs or even be unable to pay. In this risk, the most dangerous is the art value appraisal fraud and the trust guarantee company's registered capital is relatively low. According to the legislative spirit of the Company Law, the registered capital of the company actually constitutes the company's credit guarantee, the registered capital of the guarantee company has tens of millions, which seems to be a lot, but compared with the subject matter of its guarantee, it is seriously low, which directly leads to the lack of credit of the guarantee company, and there is a suspicion of deliberately evading responsibility. If it involves the fraud of art value assessment and the guarantee company knowingly assumes the guarantee and fails to pay, it will involve the criminal responsibility of fraud.

#### **5. Transaction Norms in Artistic and Creative Industries**

All kinds of transactions in the art and creative industry must strictly abide by the provisions of various laws, regulations and rules, such as all kinds of transactions to comply with the national tax administration system, involving import tariffs, will also require consideration of various tax exemptions and tax reduction provisions. All types of transactions must comply with the provisions of the Law on the Protection of Cultural Relics [4], as well as the provisions of intellectual property laws.

The 'Measures for the Management of Art Business' issued by the Ministry of Culture in 2016 put forward normative requirements, Article 8 of which explicitly prohibits 'illegal fund-raising for the purpose or illegal pyramid marketing as a means of operation; Without approval, the rights and interests of works of art are divided into equal shares for public issuance, and transactions are carried out by centralized trading methods such as centralized bidding and market makers.' In fact, this has put forward requirements and restrictions on the new financial innovation model of artistic creativity. Article 10: 'The art business unit shall, at the request of the buyer, conduct due diligence on the art purchased by the buyer and provide one of the following certification materials: (1) the original certification document approved or issued by the creator of the art; (2) Certification documents issued by a third-party appraisal and evaluation institution; (3) other supporting documents that can prove or trace the source of the artwork.' Due diligence in legal affairs is introduced into art transactions, higher legal requirements are put forward for art transactions, and art transactions are incorporated into law affairs. Due diligence, as required, is

likely to be a prerequisite for art transactions.

## 6. Conclusion

The healthy and long-term development of the art and creative industry cannot be separated from the support of the law, and the development of art practice is always ahead of the legal provisions, so legal problems are inevitable. The emergence and discussion of various hot legal issues shows that the rapid development of the art and creative industry has produced urgent problems in new application scenarios and application fields. The development of artificial intelligence art has pushed out the intellectual property issues of art and design; The development of blockchain technology and mass art consumption demand has highlighted the problems of art market finance and trading. Solving these problems will provide a code of conduct and incentive mechanism for

various participants in the art and creative industry, and promote the high-quality development of the art and creative industry.

## References

- [1] Zhang Jingcheng. China Creative Industry Development Report (2006) [M]. Beijing: China Economic Press, 2006:5.
- [2] Jin Yuanpu. The concept and characteristics of creative Industry in contemporary world [J]. Film Arts, 2006(3):5-10.
- [3] Zhu Jie, Zhu Kexiao. Research on NFT digital collection transaction risk from the perspective of art market segmentation[J]. Fine Arts Research, 2024(01):133-136.
- [4] Li Yuanjie. Forty years of legislation on the Protection of cultural Relics [J].Journal of the Palace Museum, 2022(11): 125- 141+147.