

Embroidery Crafts Intellectual Property Protection

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Abstract. Suzhou embroidery enjoys the reputation of domestic embroidery and is included in one of the important catalogs of intangible cultural heritage in China. In recent years, the definition and protection dilemma of intellectual property rights of domestic embroidery handicrafts has always existed. This paper borrows the Suzhou traditional embroidery handicraft ' Huaqing Yufei Tu ', which is judicially identified as the original author's right of adaptation, as the epitome of case analysis, and seeks to clarify the intellectual property laws and regulations for the protection of embroidery, legal sharing of manuscript copyright, professional knowledge empowerment of industry lawyers, and standardization of infringement identification. Suggestions are made to enhance the self-awareness of embroiderers to identify infringement, reduce the risk of infringement in the embroidery market, and help the embroidery industry develop in a good situation.

Keywords: Embroidery; Intellectual Property Rights; Copyright; Adaptation Rights.

1. Intellectual Property Cases of Embroidery Crafts

Suzhou embroidery integrates various techniques, from drawing to needlework, embroidery techniques, and finished mounting. As one of the national intangible cultural heritage lists, it is often presented with many daily life embroidery and boudoir embroidery works, as well as embroidery composed of various types of palace embroidery for the royal palace. [1] In the past two thousand years of inheritance and development of Suzhou embroidery, due to the high time and economic cost of making a complete embroidery work, the business model of the general embroidery industry takes the front store as the display store and the back store as the production base. Embroiderers are even more to embroider high-quality embroidery. Daily hand-created themes will choose unauthorized art drawings or masters' artworks as originals to embroider and avoid paying excessive copyright fees. Because of this, ' Huaqing Yufei Tu ' is listed as one of the 50 typical intellectual property cases in Chinese courts. [2] It has attracted attention in the embroidery industry. In the original case, the plaintiff is a well-known artist who has often won national and international exhibition awards. In 2004, his artwork ' Huaqing Yufei Tu ' was published in a collection of paintings by Beijing Arts and Crafts Publishing House the next year. The painting is a collection of many landscape and collaborate-style paintings created by the plaintiff himself, and ' Huaqing Yufei Painting ' is one of the elaborate-style paintings. However, the defendant who ran the embroidery art studio was a master of Suzhou embroidery arts and crafts, Pu Fengjuan. She embroidered two Suzhou embroidery works with the manuscript without the plaintiff's permission and won the gold medal, sold at 1.7 million yuan and 86 million yuan, respectively. From 2007 to 2008, Netease News and Xinhua News reported that the defendant Pu Fengjuan led 8 to 9 embroidered women to embroider ' Huaqing Yufei Tu ' for one year and attached a color map of the embroidery they were making in their studio.

In May 2016, the plaintiff sued the Suzhou Intermediate People's Court, accusing the defendant of infringing his copyright by copying and selling the work for profit. On July 26, 2019, the Suzhou Intermediate People's Court of Jiangsu Province finally made a civil judgment of Su 05 No.557 in the early Republic of China (2018) [3]: 1. Pu immediately stopped the infringement of Cao's copyright of " Huaqing Yufei Tu " from the day the judgment took effect; 2. Within 30 days from the date of entry into force of the judgment, Mr.Pu publicly apologized to Mr.Cao for the infringement in the ' Legal Daily ' to eliminate the impact (the content of the apology needs to be reviewed by the court first instance). 3. A total of CNY 220,000 was paid by Pu to compensate Cao for economic losses and to stop the infringement in this case within ten days from the date of entry into force of the judgment; 4. Reject Cao's other claims. After the judicial pronouncement of the case, the defendant refused to accept the first-instance judgment and appealed again, while the Jiangsu Provincial High

People's Court issued a civil judgment (2019) Su Minzhong 1410 on December 31, 2019: dismissing the appeal and upholding the original judgment. The vice president of the court said that [4] the judgment of this case not only took into account the re-creation labor of the embroidery workers and the copyright interests of the original authors but also clarified the performance effects of the two different carriers, which was helpful for the embroidery workers to have certain normative constraints on the use of the original works in the future, and promoted the good development of the embroidery industry in the future. In this case, the court comprehensively considered the popularity of the plaintiff Cao and the defendant Pu in their respective industries and the artistic attainments and originality of the original paintings and embroidery works involved. According to the judicial judgment, the defendant should bear the moral apology responsibility and give the plaintiff 220,000 yuan for economic losses.

2. Identification of Intellectual Property Rights of Embroidery Crafts

Before the trial of the case, without consulting the consent of the author of the original manuscript, the issue of whether the embroidery on the original copy produces copyright has become a controversial topic in the national judicial circle. U.S. copyright law 'once mentioned that ' it is illegal to copy or provide a copy of copyrighted material without the owner 's permission ', [5] which includes embroidery software. When you purchase a disk, you also purchase a license that allows you to load the software onto an embroiderer or computer, according to ESPC, copyright, and piracy information. In the first-instance judgment, the judiciary clearly explained the two expressions of embroidery and painting. Even if the painting is used as a support, the choice and creation of the embroidery's shape, color, and seam must also be considered as an artistic re-creation, which produces a new originality of the painting supported by its support, its way, and its effect. Moreover, the distinctive embroidery works are protected by the ' copyright law. '

Suzhou embroidery is the object of protection of intangible cultural heritage and traditional intellectual property rights. Article 2 of China's " Intangible Cultural Heritage Law [6] stipulates that " traditional art " and " traditional skills " constitute an integral part of intangible cultural heritage. This law must protect Suzhou embroidery with traditional skills. The first-instance judgment and the defendant's behavior constitute an act of infringing on the right of adaptation of others. The judgment clearly states that [7], although the unauthorized use of the original manuscript to make Suzhou embroidery without the authorization of others is not a violation of the right of reproduction, it essentially adapted the original painting and then violated the right of adaptation.

2.1 Embroidery Enjoy Independent Copyright

This case involves the definition of the copyright of intangible cultural heritage, focusing on whether the defendant has independent copyright in the embroidery according to the manuscript. The original painting works of this case are the same as the embroidery theme, and there are similarities in the expression elements such as structure, characters, and colors. However, the exquisiteness of meticulous painting lies in depicting scenery and characters with exquisite and delicate brushwork, and its essence lies in line modeling. The originality of Suzhou embroidery lies in the application of the unique needle method and the principle of refraction, reflection, and light transmission of silk thread to silk, silk, silk and other base materials, and the characteristics of ' fine, fine, elegant, and clean ' are reflected by way of manual needle routing. Wu Guanzhong, a master of painting, dedicated his masterpiece to Suzhou embroidery. In the book " I See Suzhou Embroidery, "[8] he talked about the traditional stitches of Suzhou embroidery to create new stitches with the change of content. Needling must change with the content. The defendant created a new work for the embroidered ' Huaqing Yufei Tu, 'the embroidered product. Different from the five color lines used by the character's hair in the original painting, the embroidered product uses 18 embroidery colors to transition naturally under different angles of light. In addition, regardless of the actual color-matching research or the thickness of the silk thread layout, flexible and diverse stitches have reflected the

considerable intellectual creativity of embroidery artists. According to the provisions of Article 4 of the Regulations on the Implementation of the Copyright Law of China, ' artworks refer to the planar or three-dimensional plastic artworks with aesthetic significance composed of lines, colors or other ways, such as painting, calligraphy, and sculpture. [9] Suzhou embroidery uses special silk thread on the needlework to create works with unique aesthetic compositions, which meets the requirements of the ' Copyright Law ' protection laws and regulations.



Fig 1. The plaintiff Cao Xinhua's fine brushwork painting ' Huaqing bathing princess painting.'
Image source network: FTZ copyright service



Fig 2. The defendant Pu Fengjuan Su Xiu ' Huaqing Yufei Tu.'
Image source network: FTZ copyright service

2.2 Disputes on the Right of Reproduction and Adaptation of Embroidery

The biggest controversy in the judgment of this case is whether some courts infringe on the right of reproduction or adaptation. To clarify the relationship between the right to adaptation and the right to reproduction, according to the fifth item of the first paragraph of Article 10 of the Copyright Law of China, the definition of the right to reproduction is mentioned. It is made into one or more copies employing printing, copying, rubbing, recording, video recording, reprinting, remaking, and digitization. [10] And for the provisions of the right of adaptation, in the ' copyright law ' in the fourteenth clear, it appears to ' change the work, the right to create a new work with originality. The difference between the two is that the adaptation should not only use the expression of the original work but also develop it to integrate the original work with the new expression. First, we must clarify the relationship between embroidery and original paintings. Embroidering, according to manuscripts, has become historical inertia even in the local area, rather than simply stealing profits. The defendant's embroidery works give the embroidery audience a new artistic perception and appreciation experience. The above behavior is not simply to make a copy of the ' Huaqing Yufei Tu ' elaborate-style painting; the defendant's infringement of the plaintiff's right to adapt should be recognized.

3. The Enlightenment of Intellectual Property Protection Path of Embroidery Handicrafts

Suzhou embroidery is classified as folk art. [11] As a national intangible cultural heritage, protecting intellectual property rights is particularly important for Han embroidery, a traditional Chinese manual embroidery art. In the collation of the data, it is found that there are few regulations on the definition of intellectual property protection of Han embroidery in the legal community. On the one hand, the original pattern design of Han embroidery has not been fully protected by intellectual property rights, and many patterns face the risk of infringement and embezzlement. Many inheritors have conservative development and even dare not show their works. On the other hand, it is difficult to protect the embroidery technique of the Han embroidery brand, and it is difficult to strengthen the protection through the form of patents. Whether Suzhou or Han embroidery has market value, there will be other market players to imitate and infringe on. We should dialectically look at the spread and development of limiting ourselves because of the fear of infringement. It is urgent to use the function of intellectual property rights to protect the unique skills, patterns, and copyright protection of original works and derivative works of traditional embroidery as a non-material culture, which will help promote the development and protection of embroidery.

(1) Clarify the definition of the scope of embroidery protection in China's ' Copyright Law. ' It is necessary to distinguish the intellectual property protection of the pattern of computerized embroidery of simple creative activities and manual embroidery of creative labor. In the judicial process of this case, it was found that some embroidery works had copyright. Undeniably, the artistic attainments, artistic mental innovation, and artistic creativity of the re-creation of embroidery artists ' works can reflect the strong support of the judicial department for the inheritance and innovation of various embroidery intangible cultural heritages.

(2) Excavate the network mode of embroidery + and legally share the copyright of embroidery manuscripts. Due to the lack of research and inheritance of embroidery art in China, it is not easy to effectively implement the copyright protection of embroidery works. Suzhou embroidery workers generally have the phenomenon that the manuscript of the embroidery is not original. According to relevant scholars' survey statistics, the embroiderer's original embroidery only accounts for 10 % of all embroidery. [12] Even more scholars believe that from the current market economy development of many kinds of embroidery, the vast majority of embroidery workers have the dilemma of infringement. To get out of the predicament, we should innovate a new mode of embroidery network operation, build a public trading platform, regularly carry out mutual evaluation methods inside and outside the industry on the network, use funds to encourage embroiders to create their original embroidery and protect their copyright, use VIP account password to ensure the exclusive use right of embroidery and leave traces of transaction operation, to achieve more originality in embroidery production, thus gradually reducing repetition frequency.

(3) Appoint professional lawyers to support the embroidery industry to reduce litigation pressure. In the provisions of the patent law, it is mentioned that Su Embroidery's unique needlework is a ' traditional technical resource ' [13]and cannot be declared as an individual patent. However, Su Embroidery works often need more originality of the appearance image, which makes the Su Embroidery process neglected in protecting copyright and patent rights. Furthermore, the demand for domestic embroidery works is great, and merchants often infringe on the copyright of others. There are loopholes in their copyright protection, which leads to the high cost of rights protection. Many creators of embroidery works often need help to bear such costs. Therefore, to alleviate the pressure of embroiders in the face of persistent infringement, the industry must appoint professional lawyers of intellectual property rights in the judicial part. At the same time, encourage various large, medium, and small embroidery workshops to join the industry association. In addition to regularly discussing the industry process, professional lawyers should popularize the knowledge of intellectual property disputes in the industry, improve the embroidery workers ' attention to intellectual property issues, avoid their infringement behavior, and achieve the effect of self-defense.

(4) Standardize the identification of copyright infringement and help the healthy development of the embroidery industry. China's 'Tort Liability Law' stipulates that the principle of liability of the subject of infringement is the presumption of fault. Given the economic phenomenon of a wide gap between the master and the ordinary embroidery workers in the market of hand embroidery in China, the judiciary is in the face of embroidery. The consideration of the authorization of the original painting and the authorization of the re-creation and adaptation right is to measure the different contribution rates of the two, which is not a static numerical ratio. The way of a court judgment is also to explore and innovate constantly. In addition to protecting the creative labor of embroidery inheritors in protecting intangible cultural heritage production, encouraging the innovation and leapfrog development of traditional culture, and helping to build a harmonious and win-win situation between intangible cultural heritage protection and modern copyright system.

4. Conclusion

The intellectual property system can become an incentive to create social knowledge and is the balancer of the overall interests of society. In the trial of this case, the court judged whether Su's embroidery belongs to the work and whether the embroidery artist enjoys the copyright of the embroidery. The key lies in judging whether the embroidery behavior reflects a certain degree of intellectual creativity. The judicial judgment clearly defines the nature of the infringement, and the original and artistic re-creation works are given corresponding protection. It is committed to three aspects through the way of judicial pricing to limit the amount of infringement compensation. The first is the popularity of the painter, the second is the attainments of the embroidery artist, and the third is the market acceptance, originality, creative deduction, and non-legacy production protection of the original paintings involved in the case, giving the author of the manuscript and the embroidery artist relatively stable compensation expectations, to balance the interests of all parties. In the era of information technology, copyright, in addition to protecting the author's intellectual property rights, also protects the commercial interests of the work; at the same time, the public demand for the protection of the work is also reflected. The fundamental goal of original copyright protection is to control the use, not to prohibit the use, which helps to promote the development and prosperity of the embroidery industry.

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