

Study on the Division of Copyright Expected Interests in Divorce Cases

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Abstract: With the development of economy and society, copyright has become an important source of economic income for more and more families, and has been attached great importance to more people, but because of the complexity and diversity of copyright itself, coupled with imperfection of relevant laws in our country, led to the divorce division of copyright has produced many problems in the judicial practice. Aiming at the above problems, the author will start from the problem itself and put forward some simple system ideas through the internal logic and relevant legislation. This article is divided into four parts. The first part and the second part lead to the division of the property rights in the divorce case through a brief introduction and case. In the third and fourth part, the author analyzes the rationality of the division of expected interests in the property right of works in divorce cases and the two ways of division existing in the current judicial practice. In the fourth part, the author puts forward some Suggestions on the separation system of the property right of books in divorce cases.

1. Introduction

In recent years, China's divorce rate has been rising in a straight line. According to incomplete statistics, the divorce rate in China has reached 41% in 2017. See Fig.1 1 for specific data. As public legal awareness has increased, people's emphasis on intellectual property rights is growing, but belong to the intellectual property, intellectual property when the property is converted into material possessions from spirit lag, its value is often in a "to expect state", which is why divorce cases in recent years, increasing disputes about intellectual property income split. This paper takes a case of copyright dispute as an example to discuss the division of copyright expected interests between husband and wife in divorce cases.

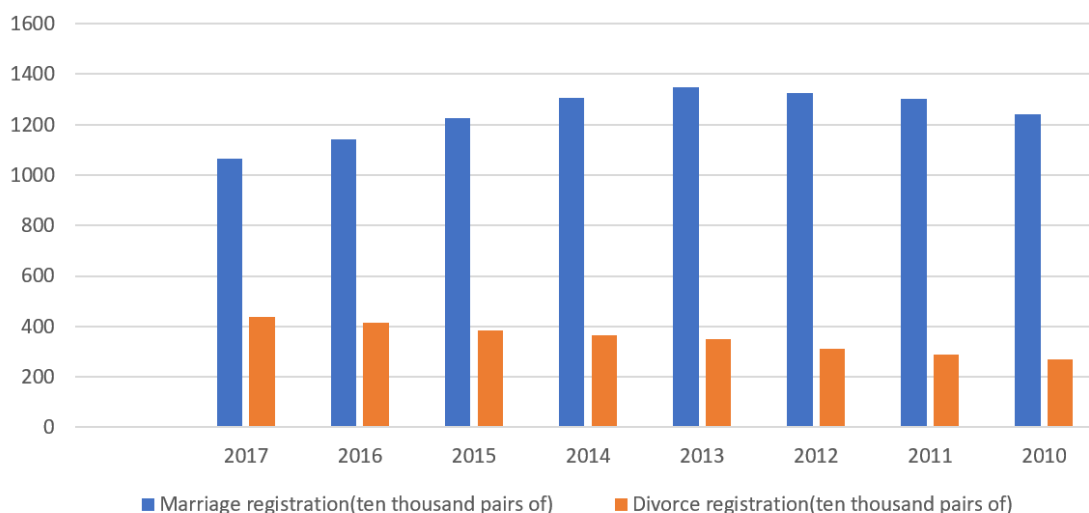


Figure 1. Divorce statistics from 2010 to 2017

2. Presentation of problem

Mr. Wang is a sculptor, with Ms. Qi register marriage 1998, inside marriage creation carves work dozens of, Ms. Qi contracts the major housework in the home between getting married more than 10 years, 2009, both sides' agreement divorces. In 2010, a sculpture created by wang during his marriage sold for 150,000 yuan. Ms. Qi filed a lawsuit, asking for the division of the 150,000 yuan and other unsold marital works. Can Ms. Qi's request be supported in this lawsuit?

In this case, Mr. Wang's dozens of sculptures were created in marriage and did not generate income during the marriage. Mr. Wang and his wife, Ms. Qi, disputed the ownership of this part of the work. The scholars have different views on the works that have obtained copyright in the duration of the marriage relationship but have not obtained the proceeds. Some scholars believe that the copyright is obtained within the relationship of marriage, and the property rights of the works are part of the copyright, and the interests generated by them belong to the joint property of Wang and his spouse, and some scholars believe that the copyright obtained by one party belongs to intellectual property rights, and the right belongs to the individual. According to the economic benefits that the right has been obtained, the interests of the husband and wife are jointly divided, but the benefits have not yet been obtained (ie Expected benefits) should be attributed to the copyright owner.

In the specific opinions on the handling of property division by people's courts in divorce cases promulgated in 1993, the proceeds of intellectual property rights are for the first time regarded as the joint property of the husband and wife. The intellectual property rights that have not yet obtained economic benefits belong to one party, but the other party can be given due consideration in the division according to the specific situation. The marriage law amended in 2001 explicitly included the proceeds of intellectual property rights into the joint property of the couple after drawing on previous experience. In the Explanation (II) on the Application of the Marriage Law of the People's Republic of China promulgated in 2003, it further explains that the income of intellectual property refers to the property income actually obtained or clearly obtained during the marriage relationship, and gives examples to illustrate it.

Throughout the current laws and regulations and judicial interpretations in China, there are still no clear provisions on the expected interests of copyright in the property division of divorce cases. However, with the development of society, people's understanding of intellectual property rights has improved, such as more and more disputes in the above cases. Therefore, it is an urgent problem to solve whether the copyright can be expected to be divided as the property of husband and wife and how to divide it.

3. Analysis of the rationality of copyright expected interest division in divorce cases

3.1 Spouse contribution

The copyright shall come into being on the date of completion of the creation, that is, the copyright owner has acquired the copyright within marriage, and only belongs to one party. The marriage law takes the acquisition of joint property as the basis of property ownership. "Acquisition" means the property which, in the absence of an agreement between the husband and wife, has been acquired by one or both parties during the existence of the marriage, shall be regarded as the common property of the husband and wife. That is to say, the vested interest in copyright generated within marriage belongs to the couple. But based on the theory of housework and spouse contribution theory, the copyright owner of one party at the time of its creation, the cost of her own time and energy and jobs to take care of the family, parenting, and make the liberated, the copyright owner can be thought of as "housework together" in its creation, therefore can expect interest shall be deemed to be obtained during the existence of marriage property, belong to the common property of husband and wife.

3.2 Recognition of modern legislation

In some countries, the expected benefits of the property acquired in marriage are regarded as the joint property of the husband and wife, allowing the divorce to be divided by both parties and giving the judge greater discretion. For example, Germany's no. 1 law on the reform of marriage law and family law stipulates that in divorce cases, the husband and wife should compensate each other for the expected qualification or expected benefit of pension and other benefits. For example, some states in the United States also consider pensions, including military pensions, as part of the division or division of marital assets. In other words, the expected benefits of marital property have been recognized by modern legislation as community property.

3.3 Protect the legal rights of both parties

For some people with bad intentions, in order to avoid splitting property with the other party, they may deliberately not realize the property rights during the marriage period, so that they can swallow all the proceeds after the divorce; in addition, the non-copyright party may also in order to obtain this part of the expected benefits and delay in divorce, this not only hinders the exercise of the rights of copyright owners, but also is not conducive to the social benefits of the work, which is essentially a waste of resources. Both of the above situations are not conducive to the healthy development of marital relations and even adversely affect social development.

4. The analysis of the mode of expected interest division of copyright in judicial practice

4.1 Theory of value evaluation

The idea is that the economic benefits of the work should be assessed by a professional appraisal agency at the time of divorce, and the couple should divide the property according to the expected benefits. But there are problems with this approach.

(1) Possibility of infringement of personal rights of copyright owners. The income of the property right of works depends on the exercise of the property right, which is closely related to the personal right. For example, the publication of a work means that it needs to be published. If the author only wants to collect it as a personal article, then the expected interests of continuing to divide the work may violate the author's personal rights.

(2) The value of works fluctuates greatly and is difficult to measure. Firstly, as an intellectual achievement, the appreciation of a work is highly subjective, and its value is influenced by time, space and other factors. Secondly, the calculation of the increment of works after divorce is also a difficult problem.

4.2 Theory of recovery of income

This view holds that the expected benefits should not be divided at the time of divorce, and after the expected benefits are converted into actual economic benefits, the non-copyright owners can claim from the copyright owners. This view avoids the difficulty of measuring value in valuation, but there are other dilemmas.

(1) If the non-copyright owner wants to ensure the realization of his right to claim for property division after divorce, the premise is that the copyright owner should have the obligation to report the property. However, due to the breakdown of the relationship between the two parties, it is difficult to ensure that the parties can learn about the other party's property status in practice, so it is difficult to make it work in practice.

(2) Increase judicial complaints, resulting in waste of resources. The property right of works can be realized in multiple forms over and over again. If each time the income needs to be divided, it will inevitably lead to the endless road of property division between husband and wife, which is not conducive to the stability of married life of husband and wife, and will also waste unnecessary judicial resources.

5. Suggestions on perfecting the system of the expected profit division of copyright in divorce cases

5.1 It is clearly stipulated in the law that the expected benefits belong to the joint property of husband and wife

Before the subsequent segmentation, the attribution of expected benefits should be made clear. China's legislation in this part is not enough, the author has discussed in the above reasonable separation of expected interests, and therefore, it is more appropriate to take it as the husband and wife common property to partition.

5.2 Give both parties the right to choose the mode of division through negotiation

Different ways of division mean that the two parties are endowed with different rights and obligations. The court should explain the different ways of division to the two parties by its authority, and then the parties can freely negotiate and choose. If no agreement can be reached, the method of value assessment shall be given priority and the division shall be conducted in the form of discount.

5.3 Establish a sound copyright evaluation system

By combining the market value of the work, the couple's contribution in the work, marriage, duration, and so on the value of the works of some important factors to comprehensive consideration, through the evaluation of copyright preliminary segmentation expected benefits, the greatest degree reducing the gap between expected benefits and practical benefits, ensure the fair division of property.

5.4 Establish and improve the prosecution system of copyright

Under the condition that the copyright evaluation system is not perfect, it is inevitable that there will be a large difference between the evaluation value and the actual value in the judicial practice. Therefore, the law should allow the parties to provide evidence to re-divide the actual economic benefits, but in order to prevent the parties from abusing their own rights, so we must make reasonable restrictions on the terms of the term, the applicable conditions, and so on.

6. Conclusion

This paper analyzes and demonstrates the division of expected property interests in divorce cases. It starts with a case and combines the relevant laws and regulations in China. It analyzes and compares the two existing methods of judicial practice in China. The preliminary discussion and thinking on the problems existed in it, and also put forward some not mature ideas.

The rapid development of society in these years has brought about many social problems while bringing more and more convenience to our lives. With the increasing variety of new types of property, copyright property rights have also become part of the divorce property dispute. Since the big family of China is made up of countless small families, it is crucial to resolve the contradictions of each small family. This puts higher requirements on relevant laws. Therefore, we must keep up with the trend of the times, speed up the improvement of relevant legal systems, and strive to make the division of property rights in Chinese divorce cases more reasonable and fair.

Some of the ideas in this article may not be comprehensive enough, but I hope that more people will pay attention to this issue through this article and discuss it with everyone.

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