



QK2119476

# 政治与法律

POLITICAL SCIENCE AND LAW



5 2021

上海社会科学院法学研究所主办

# 政治与法律 (月刊)

5月5日出版

2021年第5期 (总第312期)

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# POLITICAL SCIENCE AND LAW

(Monthly)

Edited by the Institute of Law  
Shanghai Academy of Social Sciences

No.5, 2021 (Total No.312)  
May.5

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政治与法律

2021年第5期  
(总第312期)

出版单位 《政治与法律》编辑部  
(上海市淮海中路622弄7号)

(邮政编码: 200020)(电话: 021-33165351)

ISSN 1005-9512



定价: 20元

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#### 四、结 论

随着技术与产业的发展,文学艺术科学领域总会出现许多新的智力创作成果。围绕新型创作物的著作权认定,容易陷入的误区是急于为新型创作物寻找合适的作品类型,以便找到与之相匹配的著作权保护规则。一旦新型创作物无法归入既有作品类型,其获著作权保护的可能性随之被否定。

在新型创作物的著作权认定中,作品的资格审查应是作品类型归属的前置环节。对于新型创作物能否纳入著作权客体的范围,首先应避免落入判定其是否能归入法定作品类型的窠臼,而应将焦点置于其是否能满足作品的可版权要件。在大量功能性作品涌入著作权领域的今天,功能性原则能够过滤许多看似有独创性却由技术直接决定的表达,使划分著作权与专利权客体边界的“沟渠原则”继续发挥其效用。与此同时,独创性标准也应在关注创作过程和创作结果的摇摆中,确定“显著改变”这一客观标准,以区别于邻接权客体。在其后,对于已通过作品属性认定的新型作品,技术中立与类比考量是将其优先纳入既有作品类型的两大原则。然而,这并不意味着为了归入既有作品类型,可以扭曲公众对既有作品类型的普遍认识而对其作过度的扩大解释。对于无法归入法定类型的新型表达,不妨将其纳入“其他作品”中暂时保护,待条件成熟再通过立法将其确认为新的作品类型。尽管作品类型的扩张始终稳步推进,但著作权客体所具有的包容性从未被否定。

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### Research on the Copyrightability of New Creations beyond the Statutorily Enumerated Categories of Works

Lu Chunxin

**Abstract:** When deciding the copyrightability of a new creation that is beyond the statutorily enumerated categories of works, the identification of its nature should be made prior to its classification. To determine whether a new creation is eligible for being the object of copyright, we must avoid the stereotype of directly determining whether it can be classified into one statutorily enumerated type of works, and instead focus on whether it can satisfy the copyrightable requirements of a work. In identifying the nature of a new creation, the Principle of Functionality should be the new threshold while "distinguishable variation" should be taken as the standard for originality. A new creation with the nature of being a work should be included as far as possible into one of the existing types of works through technology-neutral and analogous considerations. A new expression which cannot be classified as into one of statutory types should be temporarily protected by putting them into the category of "other works" and will be upgraded as a new type of works through legislation when conditions are met.

**Keywords:** New Categories of Works; Copyrightability; the Principle of Functionality; Categories of Works