

Reflection and Construction of the Legitimacy of Transformative Use

Yi Peng

Northwest University of Political Science and Law, Xi'an, Shaanxi 710000, China

Abstract

Transformative use, which originated in the United States, aims to balance the interests of copyright owners and dual creators and promote innovation. However, due to the controversy of its value orientation and the ambiguity of the applicable standards, it has not achieved the desired effect after being introduced into Chinese judicial practice. The academic community has focused on the specific policy level, lacking in-depth discussion of its legitimacy, and the existing views base the value positioning of transformative use on the balance of interests or correcting market failures, which cannot effectively solve the problems faced and cannot exert its due benefits. Based on Rawls's theory of justice and Kant's theory of equality of rights, the interpretation of transformative use with the help of semiotic theory can provide a basis for legitimacy and provide specific judicial rules on this basis.

Keywords

Transformable use; Legitimacy; The theory of justice; Egalitarianism; Semiotics.

1. The Raising of Questions

With the development of information technology and the rise of we-media platforms, the threshold of secondary creation is constantly lowered, and the boundary between the receiver and creator of cultural products tends to be blurred. People without professional training can easily use home computers to create new works, thus leading to the development and prosperity of public participation culture. As new cultural products emerge in endlessly, the cloud of copyright infringement also emerges. A large number of secondary creation infringement cases have been brought to court, and the existing legislation and theory supply are insufficient. In order to make the appropriate adjudication, the transformational use rules originated from the United States are quoted in judicial practice to solve the problem.

The so-called transformational use means that the original work is reasonably used by adding a new purpose or content to the original work, which does not constitute a special situation subordinate to the fair use. Section 107 of the U.S. Copyright Act defines fair use as "including the use of copies, transcripts, or any other means of a work for the purposes of criticism, commentary, news reporting, teaching, research, etc." In determining whether the use of a work is reasonable in particular circumstances, the following factors should be considered :(1) the purpose and nature of the use, including whether the use is commercial or for non-profit educational purposes; (2) the nature of the copyrighted work; (3) The amount and proportion of the used part in the whole work; And (4) the effect of the use on the potential market or value of the original work ". Since transformational use does not fall into the above enumerated types of actions, it can only be justified by general clause review. In judicial practice, transformational use essentially overlays the second and third elements of the four-element judgment method and completes its argument by explaining that it is non-commercial and does not harm the market interests of the original work.

However, the problem has not been solved. It is easy to give a conclusion, but difficult to make a detailed argument. China's judicial practice presents the application mode of mixed and mixed, and a large number of judgments simply attach the label of conversion use to the case, and then reach a conclusion. It does not demonstrate what is transformational use, why the case conforms to the provisions of transformational use, nor does it demonstrate the basis of the actual law of transformational use? Why conform to the conversion of use can prevent infringement?

The use of conversion originated from the judicial practice of the United States, but even in the country of its origin, because of its vague theory, there are many arguments. What's more, the theory of fair use in China is quite different from that in the United States. On the one hand, the United States pursues an open legislative model and does not require fair use behavior to belong to any clearly listed type of behavior. As long as the four-element judgment method is adopted to make an overall judgment, it can meet the fair use. However, China does not explicitly stipulate the four-element judgment method, but chooses the three-step test law in TRIPS as the general clause of fair use in China. In addition, China adopts the closed-form legislation mode of fair use, which determines that an act is to be identified as fair use in China's judicial practice. It is necessary not only to clearly conform to the specific behavioral requirements listed in China's copyright law, but also to accept the restrictions of the general provisions. The different legislative models make it impossible for China's judicial practice to directly take transformational use as the basis for adjudication, or to add transformational clauses, or to provide a set of connecting and applicable methods by scholars.

The addition clause may not be the best policy at present. On the one hand, the copyright was revised just 20 years ago, and then revised again within half a year. Such frequent revision of the law has the stability of breaking the law. Moreover, the aforementioned revision takes a long time, more than 10 years. Even if the revision is carried out without regard to the stability of the law, it may be difficult to make a quick decision. After a long delay, it still cannot provide limited supply for judicial practice. Finally, many scholars hold negative opinions on the direct introduction of a policy, which shows that it is not an option either. If THE legislation fails, IT IS necessary to interpret the existing provisions and construct a theoretical framework to serve the judicial practice. However, the existing researches are constantly litigating and inconsistent. Some scholars are critical of transformational use, others believe that the existing theories are sufficient to solve the problem, and the theoretical models of supporters are also different.

The author thinks that the root cause of the confusion of the existing research is that most scholars are based on the physical system construction and ignore the metaphysical value reflection. In the present demand of judicial practice, only the first reflection and construction of the legitimacy of the use of conversion can accurately find its correct value positioning, to clear obstacles for the introduction of its concept. Secondly, legitimacy plays a guiding and limiting role in the concrete construction of policies. On the basis of the reflection of the existing research, the author intends to give a new interpretation of the use of transformation by semiotics, reconstruct the basis of its legitimacy through Rawls's "theory of justice" and Kant's "egalitarianism", and provide the preliminary construction of judicial rules, in order to contribute to the judicial practice of relevant issues.

2. The Critique of Utilitarianism Theory

2.1. Existing Research on Legitimacy and Its Problems

The existing theoretical studies either ignore the discussion of legitimacy issues, directly discuss the specific policies of transformational use, or write about it in terms of interest balance or functionalism, lacking in-depth development and discussion. The former can only endorse policies based on practical needs due to the lack of legitimate discussion. However, it

is unclear whether the means are justified, which affects the persuasion of its conclusion. As a result, there are still many users who oppose conversion. In addition to questioning the ambiguity of its practice standard, there are also some critics of its value positioning. At present, the justification focuses on the path of functionalism and the balance of interests. The former is based on the incentive of creation, and believes that transformational use is justified because it encourages the creation of new works. Some scholars pointed out that people in the process of open to the future the author copyright to knowledge sharing common way of products and innovation to expand opportunities for users to create, while users in the copyright person unexpected way or purpose use of copyrighted works, realizing the maximization of added value, provides a continuous drive new innovation. Transformational use dredges the creative barriers between copyright owners and users, unblocks the innovation channels, promotes a lot of creativity that is beneficial to the society, makes innovation input and output continuously, so that the endless cycle repeats, and then promotes the emergence of re-innovation. Based on the balance of interests, the latter believes that transformational use is a tool to balance the interest imbalance between the strong originator and the weak innovator. Some scholars argue that the fair use system is actually balancing the production of new knowledge with the market of original works. Based on the above understanding, some scholars define the boundary of transformational use as encroachment on the market of the original image. They believe that the rules of transformational use should focus on analyzing whether the use of the image encroachment on the market of the original image when investigating whether the image is transformational. However, the former cannot answer whether encouraging the creation of the second innovation will weaken the enthusiasm of the original, and finally whether the overall well-being will be increased based on the overall supply of social and cultural products. The latter can not prove whether there is a stable strong or weak relationship between originality and innovation in reality, nor can it effectively answer the boundary of interest balance? For example, compared with large companies such as Disney, small cultural and creative producers seem to be the relationship between the weak and the strong. Why can't the former be exempted from copying and adapting the latter's works because of the balance of interests?

2.2. Critique of Utilitarianism

Actually both utilitarian and balancing of interests in the final analysis is the way of utilitarianism, the calculation of interest both as the basis of legitimacy, utilitarianism is not a valid path of argument, however, in fact on the philosophical foundation and practical application is difficult to justify itself, so it is difficult to provide solid transformation using reasonable argument.

First, utilitarianism confuses nature with goodness. Utilitarianism takes maximization of happiness as its standard, and its founder Bentham believes that the so-called happiness is happy experience or sense of happiness. But happiness alone is not necessarily a criterion for selection. Nozick proposed a thought experiment called the "pleasure machine" : If there were a machine into which you could feel nothing but happiness, would you choose to enter it? In the end, most people said no. So it's hard to say that the experience of pleasure is happiness. The fact that the experience of pleasure is tied to the good does not justify why a naturally occurring experience should be equated with the ethical standards that govern judgment, but only by appealing to the reader's intuition or inherent bias to gain its persuasive power. In fact, when this theory is elevated above the idea of groups, it is even more difficult to explain. Different individuals have different preferences, which naturally produce different happy experiences. Can we simply assume that we can obtain a definite answer by unified calculation? This calculation method is difficult to convince the parties, and actually relies on a kind of intuition, and ignores the diversity of people, the realistic differences between individuals, and the diversity of choices.

Secondly, utilitarianism is in conflict with the legal right model. As a legal right, the so-called right is the interest recognized and protected by the law. One of the core differences between the right and other interests is that the right is the interest recognized and protected by the law, which has stability, legitimacy and can be protected. But in a utilitarian perspective, rights themselves can be compromised for the greater good. Therefore, the difference between rights and general interests is eliminated in fact, and the value judgment of the legislator is carried on the right, which should be followed rather than deviated from in the judgment. However, THE TRANSFORMATIONAL USE UNDER THE UTILITARIAN INTERPRETATION IS essentially equivalent to the adjudicator's case-by-case measurement, which in fact constitutes the presumption of the judiciary over the legislation. As long as the judicator calculates that the tort benefits are greater, he can abolish the explicit provisions of the law and justify the tort. The concept of utilitarianism seems to solve the practical problems. But in fact, it only turns the legal problems into computational non-problems, and realizes the justice the judge's individual heart at the cost of the dignity of the law. Furthermore, the establishment of rights by law cannot be summarized simply in terms of interests. Besides economic interests, there are many other considerations. If only the calculation of economic interests, namely efficiency, is taken as the basis, the purpose of establishing rights by law may fail. Some scholars have pointed out that the fundamental purpose of law is not to promote economic development, but to pursue fairness and justice and safeguard human freedom and dignity. Utilitarian analysis ignores human subjectivity and takes means as the end itself. In addition, the law rights also has the function of guiding people behavior, the boundary of the rights that the boundary of the behavior, especially the imperium as copyright, all have respect for the right holder, except the obligee may infringe upon the rights of obligations, if the right boundary ambiguity, can be calculated by the interests, adjust, make people in the planning and the daily life, Don't know what to do.

Finally, there is a great deal of ambiguity in the application of utilitarianism. Utilitarianism seems to be simple and clear, and the answer can be obtained by adding and subtracting. As Bentham said, when a government measure is more likely to increase the happiness of the community than it is to reduce the happiness, he can be said to conform to or obey the principle of utility. But how do you actually get the information you need? How do you calculate it once you get it? And so on. On the transformation using the above problem, we will not be regarded as tort of, and able to secondary creators to create more works, increase the supply of cultural products, society overall well-being not do more harm than good, but the calculation is too simple, the ignored while encouraging secondary creators to damage the interests of the original author, as a result of the original author creation will reduce, Will it lead to the enthusiasm of the first creation is discouraged? Utilitarians do not answer this question. In fact, it is not the reluctance to answer, but the difficulty to answer. On the one hand, it is necessary to sum up several quantifiable indicators for interest calculation only, and on the other hand, it is necessary to have enough research data for calculation. But in reality, how much does copyright benefit motivate creators? Without this incentive, can other variables, such as the desire and pleasure of creation, be compensated for by the first-mover advantage in market competition? How do you set metrics for these problems? There are unanswered questions about how to get the data. No wonder scholar Fisher points out that most scholars have given up on motivation theory because they have little hope of obtaining relevant empirical information. Almost everyone agrees that such information is not yet in our grasp.

3. The Proof of Legitimacy From the Perspective of Semiotics

3.1. Understanding The Use of Transitivity From the Perspective of Semiotics

In order to justify the use of conversion, we first need to clarify what conversion use is. It seems that the traditional understanding understands it as the creative act of adding something new to the original work. In practice, there is a distinction between content conversion and purpose conversion. The former, such as appropriation of art, parody works, using the content of the original work as material to create new works. The latter, like a library catalogue, uses the contents of the original work for different purposes than the original work. This distinction seems clear, but in fact it is not clear. Except for a few typical types, such as parody works, the use of library materials, etc., can be unquestionably ascribe to conversion use rather than infringement. Similar to the appropriation of art, esports live broadcast images and other controversies. It's not so much that conversion use is accepted, but that the only types of behavior that are accepted by the public are put under conversion use. But what to add, and how much to add to meet the standards, has been an unstated dilemma.

In fact, the reason why the previous definition method is difficult to give a clear standard is that it ignores the understanding of the system, regards the problem of the use of conversion as an isolated problem, and tries to get the final answer through the analysis of this problem. But in fact, copyright law is a complete system, since the transformational use is the birth of new original content, it needs to be interpreted to degree innovation, and originality and works complement each other. Only by returning to the basic theory and reflecting on the concept of works, can we point out the direction for the definition of creative use.

The general theory identifies a work as an original expression. But what is expression is not defined. The uncertainty of the concept of expression also makes it controversial whether there is a clear dichotomy between thought and expression. The unclear connotation and extension of expression also affect the problem of the use of transformity. In order to solve this problem, a more accurate analysis of expression is needed. Semiotics provides an effective reference for the interpretation of literary and artistic works. Works are composed of language, words, notes, lines, movements and other symbols with meaning set. Saussure divides symbols into signifier and signified. The so-called signifier refers to the combination of tangible symbols in a work, while the signified refers to the cultural image formed in the reader's mind conveyed by the work. For example, in the musical work of Song of Peony, its characters and musical symbols are the signifier of the work, and the graceful and luxurious cultural image of peony conveyed by it is the signified of the work. A complete work is composed of signifier and signified together, in other words, the so-called work is a signifier with specific signified.

It should be noted that signifier and signified are not the correspondence of expression and thought. In fact, both signifier and signified are components of expression. It is not difficult to understand that signified is expression, but why is signifier still expression as a cultural image? Because actually works from the tangible symbol combination, work is still exist, qiong precious jade v in is copied, even if in the positive change qiong precious jade in the original text, but the specific plot and character, can still constitute plagiarism, or just simple transformation for the original text conveys a similar meaning, you can think it is not infringement, It is a great indulgence for infringement. German copyright law theory has a similar expression: for this kind of expression form, people can be subdivided into external forms and internal expression, external expression of the form is in accordance with the means to adopt a kind of modelling, the inner work of expression form in the works creators, formed in the mind of shows the author's unique way of thinking, understanding and imagination.

After understanding the work, we can understand the originality and transformational use. Since a work consists of signifier and signified, originality is naturally the change between signifier and signified. In the case of little signified change, the change of signifier constitutes

plagiarism and adaptation; if it is only a simple conversion of elements, it constitutes plagiarism; if there is high creativity in the change, it is understood as change. The former is typical, for example, the simple substitution of words in the original work of plagiarism, the latter is typical of the film and television changes to the novel. And conversion using what is referred to in the change or not under the condition of less change, dramatically changed, parody works such as Campbell's case, the defendant referred to in the heavy use of the plaintiff, is "pretty woman" the lyrics, but through the form of a parody heavily it refers to the men of the elegant lady love into love with men. For the above conclusion to be established, two questions need to be answered. One is why plagiarism with simple signified transformation is also understood as original behavior, and the other is why signified change does not leave the judgment of infringement, while signifier change can be regarded as non-infringing behavior. The latter has two subsequent sections citing Rawls and Kant, while the answer of the former requires a concrete understanding of what is originality. In fact, originality is not the absolute relationship between the presence and absence, on the contrary, originality has been the relationship between high and low. Simple change the copy of the word is not a bit is not original, but simply because the originality is too low, it will not be treated as works, so that convert the word plagiarism is one of the behavior of the original type from the content of this logic ontology, and don't think the original so as to not work is to standardize the sense of its legal position.

3.2. Semiotic Theory and "Theory of Justice"

As mentioned above, the reflection on utilitarianism makes the author focus on Rawls's theory of justice as fairness. By demonstrating that transformational use plays an important role in freedom of speech, the justification of this theory is based on the first law of Rawls's theory of justice.

Rawls's theory of justice is regarded as the revival of liberalism in the late 20th century. Its core theory can be summarized as two principles of fairness. How were these principles established? Rawls introduces the concept of "veil of ignorance". In short, Rawls assumes that people are in an initial state of ignorance. In this state, individuals do not know their specific position in society, so they will not choose the principle that maximizes the benefits of a particular position. It is in this assumption that Rawls believes that people will eventually arrive at two principles: first, that everyone has an equal right to the widest range of freedoms available to everyone else, and second, that social and economic inequalities should be treated according to the following criteria: (a) give the greatest benefit to the disadvantaged; (b) Open office and status to all under conditions of fair and equal opportunity.

It should be noted that the application of the two principles has its specific rules. First of all, the two principles do not work together. On the contrary, the first principle applies in the political-social sphere, while the second principle applies in the economic sphere. Specifically, the former adjusts the distribution of basic civil rights, such as voting rights and freedom of speech, while the latter applies to the distribution system of wealth and income. Secondly, the relationship between the two principles is not equal, the first principle has priority over the second principle. In short, political freedom cannot be traded for economic gain.

Rawls's theory focuses on universal justice. As a link in the chain of social interests, intellectual property rights naturally exist in it, and Rawls's theory of justice can be used as a model for analysis. In other words, the intellectual property system should also adhere to the above principles. The interest protection of intellectual property cannot be based on the derogation of the political freedom of the people. In other words, if we can argue that transformational use is a tool that citizens' political freedom cannot obtain, we can naturally justify the behavior that damages the economic interests of the original author on this basis.

The most important value of transformational use for civil political freedom lies in its irreplaceable role in promoting freedom of speech. Freedom of speech is regarded as the

foundation of modern democratic politics. Is also because of its close connection between democracy and, seems to only public discussion of issues to be covered by the free speech, but in fact, this understanding will be the realm of freedom in a very narrow, want to really understand the freedom of speech must be based on the theory of semiotics system analysis modern cultural influence on people's life.

The political participation and expression of the public are not rooted trees and water without source, but depend on the values and political positions formed by the public in the social and cultural exchanges and cultural participation. And the people's social and cultural life can not be separated from the mass cultural products and exist independently. In fact, people's values and their judgments of right and wrong, good and evil have long been unconsciously shaped under the influence of cultural products. Some scholars have pointed out that people use cultural symbols to show their political identities, build political alliances, and disrupt and challenge seemingly natural beliefs and identities. This means that the mass cultural symbols which seem to be unrelated to the political decision-making process have the significance of political symbols because of their key role in the process of constructing the political imagination and expression of life. As it is said, the cultural life of the people precedes the political life, but the two are not a broken relationship. On the contrary, in a sense, the cultural identity determines the context of the political life of the people to a considerable extent. Therefore, the control and interpretation of the meaning of cultural symbols have the practical consequences of framing individual and even social and political consciousness. In this regard, the struggle for the right to interpret cultural symbols becomes a political struggle similar to the struggle for the right to formulate and interpret public policies.

It can be said that the derivative political interpretation of popular cultural symbols makes those whose creation purpose is not to directly or indirectly interfere in the process of making public policies, but to challenge, subvert, ridicule and mock the digital transformation of existing popular cultural works and their representative symbols gain a political/public power. Because of its deconstruction, it weakens the monopolistic shaping ability of the mass media industry, which dominates the production of contemporary social significance, to social members' values and life concepts. The symbol is arbitrary and the combination of signified and signifier is arbitrary. As Saussure put it: in fact, any means of expression accepted by a society is, in principle, based on group habit, or convention. Transformational use is to deconstruct the original mass cultural symbol by linking it with the original cultural symbol through similar or identical signified on the basis of changing the signifier, and express one's opinions and views on the cultural field that precedes political life but has a deep influence on political life. Some scholars point out that, through the transformational use, the users of mass cultural products often highlight the meaning, identity and imagination space excluded by the concepts and social picture that these products and their cultural symbols try to construct and represent.

By deconstructing the monopolistic mass cultural products, transformational use expresses the creator's own specific views on a certain field of cultural life, and provides competitive and diversified speech in the critical deconstruction, thus becoming an inevitable and important part of freedom of speech.

3.3. Semiotic Theory and Kantian Egalitarianism

Kant's theory is extensive and profound. Existing studies have introduced Kant's theory into intellectual property rights, mostly focusing on justifying intellectual property rights and justifying the rights of individuals to their intellectual products through Kant's theory of property "free will". Some scholars point out that his theory of free will and property rights provides a strong philosophical basis for the establishment of modern intellectual property and its right system. However, the correspondence between Kant's theory and intellectual property

rights is not only reflected in the justification of intellectual property rights, but also the "egalitarianism" in Kant's theory can be used to explain the justification of transformational use. The egalitarianism of Kant's theory can be traced back to his absolute rule that man is an end rather than a means. The individual, because of his rationality, is separated from the genus of animals that eat hair and blood, and becomes a man with moral subjectivity rather than a bidirectional mammal. Kant believes that it is this rational ability to create self-purpose that makes individuals possess human dignity, because only this ability to create purpose that the rational individual has can make other objective beings, which originally have no value, obtain artificially created value and thus become the purpose that people try to achieve. The rational power to create ends/bestow values then becomes itself the end of all the ends created, and thus the end itself. As Kant pointed out, since the dignity or intrinsic value of man lies in his being a rational being capable of creating a purpose. So whether someone is smart or stupid. Good or evil, as such a rational being, he/she must be regarded as an end in itself, and as an end in itself all men are equal. In other words, from the perspective of Kantian egalitarianism, we are all equal individuals and should have the right to use reason to plan our ideal way of life equally.

However, the realization of such a right requires the individual to be able to rely on their own ability to acquire property space, may not be opposed. Similarly, we should be able to acquire enough information according to our ability to carry out our own expression. The question arises, however, if rights are equal, why are we allowed to base our expression on the work of others? To answer this question, we need to interpret copyright. As a kind of intangible property right, copyright is really restricted by the utilization behavior of the non-right holder who obtains the works. The non-right holder cannot copy, sell or distribute the copyrighted works of others at will. However, non-rights holders can use the conceptual resources in the works to enrich their own expression. In the past, we understood it as "copyright only protects expression, but not ideas". In fact, according to Kant's theory, this process should be interpreted as that readers use their own rationality to form their own ideas with the help of other people's texts in the process of their own life planning. And the idea of each individual itself is the exclusive domain of the absolute domination of the rational individual. That individuals use their reason for the interpretation of the text form their own idea should be regarded as copyright owner and the rational himself equal respect individual life planning, or will as their legal access to copyrighted works through public means of work you want to achieve any purpose, not have independent thinking ability, An equal individual who can acquire information independently and thus form a unique life concept and value goal.

The semiotics' understanding of transformational use is more consistent with Kant's theory. From the perspective of semiotics, works are regarded as the combination of specific signified and signifier. The transformational use borrows a similar signifier and carries a different signified. In fact, the signifier separated from the specific signified is only a set of abstract symbols, which cannot play the function of transmitting the rational concept of the original author and cannot carry the life planning under the original author's rationality. On the contrary, transformational works become the product of the rational concept because they are endowed with the signified of the transformational creator. At the same time, the interpretation of the text caused by the audience is far from the understanding of the original work.

4. The Guidance of The Theory of Justification to Judicial Rules

Transformational use should be widely used in judicial practice to ensure "freedom of speech" and "self-realization" as mentioned above, and indirectly realize the purpose of encouraging cultural innovation and enriching the supply of social and cultural products. However, if transformational use oversteps its applicable boundary, it may be self-defeating. Therefore, no

matter what theoretical basis is adopted for transformational use, the construction of applicable rules under the guidance of the theoretical basis should be given.

Transformational use under the guidance of utilitarianism delineates the boundary of its applicability in the market relationship between the original work and the derivative work: If the original relation with transformation of the market is competitive and replaceability, two works exists in the same market has been identified as not transformation using established, on the contrary, if the original and transformation of market relationship is complementary, difference, two works does not exist in the same market, can be used as transformation. This understanding begins with the last element of the four-element method of fair use in the United States: the effect of the use on the potential market or value of the original work.

Drawing the applicable boundaries of transformational use on the basis of market relations is not in fact clear-cut, but tends to complicate the issue. First, market segmentation is inherently unstable. There need not be rigid barriers between different markets, especially close ones. Second, there is ambiguity in the market for transformational works. For example, if a montage works of art are created using the original works of others, it is hard to say that they are completely unable to be used to obtain and appreciate the original works. Finally, there is uncertainty about the scope of the derivative market for the original. For a novel, film and television is its derivative market, fan works is its derivative market? Whether derivatives markets base their judgment on the expectations of the writer or the reader is open to question.

As mentioned before, since transformational use is understood as the conversion of signifiers in the presence of certain similarities in the signified. The freedom of expression to expression should be on one's own point of view, the work of others here itself acts as the material, rather than merely express is expressing itself, self-realization, also think the original is just in this information, by using the second author, provides a self-fulfilling tools, if there is no new creation, just repeat the expression of the original Not only does it not achieve the so-called self-realization, but it also impedes the self-realization of the original work itself,

Therefore, the boundaries of transformational use should be based on doing. In other words, only the expressions of transformational use show different signifiers. Based on the perspective of general audiences in the field, if the difference between the signifier of the transformational work and the original work is more distinct, the work should be identified as transformational use.

References

- [1] Allen W. Wood, *Kantian Ethics*. New York :Cambridge University Press, 2008, p91.
- [2] Abraham Drassinower, *A Right-Based View of the Idea/Expression Dichotomy in Copyright Law*, 16 *Can.J.L. & Jurisprudence* 9-10, 2003.
- [3] Laura A. Heymann, *Everything is Transformative : Fair Use and Reader Response*. 31 *Columbia Journal of Law & the Arts*, 449, 461. 2008.
- [4] Rosemary J. Coombe, *The Cultural Life of Intellectual Properties*. Duke University Press, 1998, P42.
- [5] Henry Jenkins ,Tara McPherson and Jane Shattuc , *Hop on Pop: The Politics and Pleasures of Popular Culture*. Duke University Press, 2003. p11.
- [6] John Street: *Politics and Popular Culture*, Temple University Press, 1997. p38.
- [7] .David Fisher, *Constituting copyright: freedom of expression and limits of copyright in Canada*, 55 *University of Toronto Faculty of law Review* (1997).
- [8] Matthew R. Grothouse, *Collateral Damage: Why the Transformative Use Test Confounds Publicity Rights Law*, 18 *Virginia Journal of Law & Technology* 474 (2014), p. 540.