

DISCUSSION ON THE POSSIBILITY OF VIRTUAL CHARACTERS BEING REGARDED AS LEGAL PERSONS

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A. INTRODUCTION

In recent years, the rapid development of entertainment and cultural industries has significantly increased the commercial value of fictional characters, also referred to as artistic images within works. These characters, particularly those with considerable social influence and public appeal, have become valuable assets for businesses seeking to capitalize on their popularity. The evolution of virtual technology has further transformed the expression of these characters, allowing them to interact with the real world in unprecedented ways. Hatsune Miku, a virtual singer created using voice synthesis software and holographic projection technology, represents a significant milestone in this evolution. The emergence of virtual idols like Hatsune Miku, who engage in real-world activities and gather large fan bases, raises important legal questions about their rights and status.

The primary objective of this paper is to explore whether ACG (Animation, Comics and Games) fictional characters may be recognized as legal persons. To achieve this, the research employs a combination of doctrinal and comparative methodologies. As part of the doctrinal approach, this paper examines existing legal principles, statutes, and case law to formulate an understanding of the extent to which fictional characters are protected under the contemporary legal framework. The comparative approach examines how different jurisdictions address the protection of fictional characters, identifying best practices and potential models for legal reform.

By examining the legal personhood of ACG fictional characters, this paper aims to contribute to the broader discourse on intellectual property rights and the evolving nature of personhood in the digital age. It seeks to provide a framework for understanding the complex interactions between virtual characters and the real world, offering insights into how the law can adapt alongside technological advancements and cultural shifts.

B. BACKGROUND INFORMATION

(1) BACKGROUND

Fictional characters, also referred to as artistic images within works, represent a more marginal concept compared to the work itself. In recent years, with the rapid development of the entertainment and cultural industries, fictional characters have increasingly demonstrated their commercial value. Not all fictional characters hold commercial value; only those with significant social influence and public appeal can

be effectively commercialized.¹ Many outstanding works have introduced vivid fictional characters that are deeply cherished by their audiences. In response to intensifying market competition, businesses strategically capitalize on the popularity and affinity of these characters by integrating them into the commercial sphere to attract consumers. This is evident in products such as Mickey Mouse dolls and clothing adorned with Snow White designs, where characters are repeatedly leveraged to generate economic benefits.

Simultaneously, alongside the advancement of virtual technology, the form of expression of fictional characters has also undergone tremendous changes. The characters that originally existed in the fictional world of the work, with the help of virtual technology, realized the interaction between the fictional world and the real world. Starting with Hatsune Miku, increasingly realistic virtual characters have emerged in the public sphere, commonly referred to as virtual idols.²

Hatsune Miku serves as a prominent example, originating from a voice synthesis software of the same name. As a virtual singer, she held a concert in the real world on 9 March 2010, thereby rendering Hatsune Miku the first virtual idol in the history of human civilization to use semi-holographic (2.5D) projection technology to hold a concert.³ Starting with this realistic concert, the fictional characters began to break out of the patterns that existed in the works and connected with reality. Since then, numerous virtual idols have emerged, engaging in real-world activities through their virtual representations. Unlike characters from continuous works, these virtual idols often possess only minimal personal background settings. Although the concept of virtual idols predates Hatsune Miku, she represents a significant departure from earlier virtual idols, marking the emergence of what is considered an idealized virtual idol.⁴

As virtual idols entered the market on a larger scale and attracted growing fan bases, controversy ensued. A defining characteristic of virtual idols is their high degree of anthropomorphism, which extends beyond their often lifelike visual designs to encompass their highly humanized modes of activity. In accordance with their character settings, they perform various activities, such as employing holographic

¹ Jinpeng Guan, ['On the Intellectual Property Protection of Fictional Characters'] (Master Thesis, Shanxi University 2011) 7

² Hanning Gao, 'ou xiang ben xu ni:ou xiang gong ye de ji shu ge xin, fen si fu quan yu sheng chan ji zhi ['Idol is Virtual: Idol Industry's Technological Innovation, Fan Empowerment, and Production Mechanism'] (2019) Media Criticism 74

³ The Diva That Jumped out of the Monitor! 'miku's Day 39's Giving Day Lunch Concert - Hello, This is Hatsune Miku.~' Report (1/2) (ITmedia, 17 March 2010 <<https://nlab.itmedia.co.jp/games/articles/1003/17/news068.html>> accessed 12 September 2024.

⁴ Hanning Gao (n 2)

projection technology to host personal concerts and leveraging their vast fan bases to serve as ambassadors for well-known brands.⁵

With the advancement of digital technology, companies are increasingly integrating AI into the creation of virtual idols. It is foreseeable that these virtual idols will become even more lifelike, closely resembling real humans. However, despite the rapid development of virtual idols, the existing legal framework remains insufficient to address their unique characteristics and the rights associated with them. Many well-known virtual idols have cultivated substantial fan bases, and for these fans, the experience of interacting with a virtual idol may be perceived as comparable to engaging with a real celebrity.⁶ The authenticity of the character has become a secondary concern. Therefore, it is worthwhile to consider whether virtual idols should be granted legal personhood. This raises further questions about whether virtual idols could derive benefits from their performances or creations. Beyond explaining why the law protects the creators of characters, it is also necessary to explore how these protections can be extended to ensure that virtual idols, as well as their creators, are adequately safeguarded within the evolving technological landscape.

(2) CURRENT LEGAL PROTECTION OF FICTITIOUS CHARACTERS AND RESEARCH METHODOLOGY

If you search for 'Mark' on Google, you will find both the real person and the fictional character with the same name appearing in the search results.⁷ When a digital camera is used to capture images, its face recognition function locks onto every face, whether of a living person or a fictional character.⁸ These phenomena show that from an informatics point of view, humans and fictional characters are the same. However, in terms of legal status, characters are necessarily different from humans. Human beings are subjects of rights, whereas fictional characters are considered objects. Presently, legal protection for such characters primarily falls within the domain of intellectual property rights. As integral components of creative works, the development of character imagery plays a crucial role in a work's success.

⁵ EW AR, Hongyang Tang, "Reality' virtual idols are about to replace real people!" (Dongxi Entertainment, 15 November 2019) < <https://mp.weixin.qq.com/s/BJiuj6JX3ngaCdqsl443zQ> > accessed 12 September 2024.

⁶ Jiahui Liu, 'Virtual Presence, Real Connections: Exploring the Role of Parasocial Relationships in Virtual Idol Fan Community Participation' [2023] *Global Media and China* 20594364231222976, 4.

⁷ Shinichiro Harata, *kyarakuta- no houteki tii* : 「kyarakuta- no paburisithi ken」 siron [The Legal Status of Characters : An Attempt to Illustrate 'Character's Right of Publicity'] (2019) vol.17 *Information network law review* 1

⁸ Aoi Ōta, *ningen no kao* · *kyarakuta- no kao no tiga i to ha* : sono kentou kanousei ni tui te [Discuss the differences between human faces and character faces'] (2020) Summary of the Graduate School of Hosei University 1

(3) CURRENT LEGAL PROTECTION OF FICTITIOUS CHARACTERS

Many countries still use copyright laws to protect fictitious characters, however, the degree of protection differs across jurisdictions. In Japan, the law establishes copyright protection for fictional characters through a series of precedents. They argue that a character is not the work itself; however, when a work is depicted as a visual representation of a person or animal, its copyright extends beyond the fixed expression of the image to include the character's overall depiction.⁹ The copyright protection of characters in Japanese law is limited to cartoon characters represented by graphics.¹⁰

In Canada, characters portrayed in visual form could be protected as works of art. The fictional characters in literary works enjoy copyright as the literary works themselves.¹¹ In the United States, fictional characters are protected by copyright through court precedents, however it is difficult to determine which kind of characters should be protected.¹² In China, the legal method used to protect characters is generally to make them a 'trademark' or 'design' instead of a 'copyright'. Although from the perspective of protecting the function of the character as a trademark and the design, the creator of character obtains some rights, however, this is not the same as the overall right for the character itself.¹³

In general, the protection of fictitious characters in various countries has the following characteristics. First, fictional characters form a distinctive category within copyright law, but they are not considered an independent type of work. Many countries regard visual characters as fine art works, and regard literary characters as part of works.¹⁴ This is the basis for characters to be protected by copyright. Second, copyrightability is an important condition for fictional characters to be protected by copyright. For example, originality and specific forms of expression. Only when a character forms a specific expression, could it break away from the scope of 'ideological content' and become the object of copyright protection. At this point, visual characters are easier to protect than literary characters.¹⁵ Third, the distinct attributes of fictional characters, such as their names, voices, and signature actions, are frequently commercialized because they create strong associations with the character

⁹ Bin Zhu, 'On the Merchandising Right of Roles' (1998) 1 Chinese and Foreign Law 25

¹⁰ Du Ying, 'Discussion of the Merchandising Right' (2000) 13 The Collection of Civil and Commercial Law 41

¹¹ Handong Wu, *Research on Copyright System in Western Countries* (China University of Political Science and Law Press 1999) 62

¹² Yana Lin, Jing Song, 'mei guo bao hu xu ni jue se de fa lv mo shi ji qi jie jian' ['On the Legal Mode of Protection to the Fictional Characters in the USA and Its Reference'] (2003) Journal of Guangxi Institute of Political Science and Law 17

¹³ Shinichiro Harata, 'Virtual Character as Legal Person' (Studies in Informatics Shizuoka University, 28 March 2019) 3 <<https://doi.org/10.14945/00026379>> accessed 18 July 2024.

¹⁴ Handong Wu (n 11) 83

¹⁵ Pan Yu, 'xu ni jue se de ke zhu zuo quan xing yan jiu' ['Research on the Copyright of Fictional Characters'] (Master Thesis, He Bei University 2018) 3

in the minds of consumers. However, using these attributes for commercial purposes does not equate to using the copyrighted elements of the original work.¹⁶

From the above analysis, it is evident that the copyright protection for fictional characters has its limitations: Characters are not fully covered by copyright protection. Certain defining elements of characters, such as individual names, are not considered specific expressions, and others, like accents, may lack the originality required for copyright protection.¹⁷ Consequently, copyright law is often inadequate in these cases, making it challenging to determine whether a character can be considered a copyrightable subject.

In short, under the modern copyright system, it is difficult to provide the same legal protection for fictional characters as the work itself. Therefore, copyrightability remains a widely-discussed and contentious topic.

C. INTRODUCTION TO FICTIONAL CHARACTERS

In this section, the focus will be on the conceptual framework surrounding fictional characters. The discussion will commence with a comprehensive definition, emphasizing the distinctive attributes of fictional characters, such as their names, visual designs, and personality traits, which contribute to their lasting impact on audiences. Despite their separation from the narrative in which they appear, fictional characters often maintain an intrinsic connection to the work, while simultaneously transcending it in terms of influence and longevity.

This part will also analyze the essential elements that define a fictional character in a legal context, exploring the criteria necessary for their recognition and protection under the law. Furthermore, various classifications of fictional characters will be examined, with particular attention to ACG (animation, comics, and games) fictional characters and virtual idols, which are increasingly prominent in modern media. The interaction between these characters and the real world will be critically analyzed, forming the basis for the subsequent examination of their legal and commercial significance.

(1) DEFINITION OF FICTIONAL CHARACTERS

Usually, character shows distinctive characteristics through artistic elements such as character names, image appearances, and personality traits, which attract readers' attention and even leave a lingering impression in the readers' hearts. Although the characters are separated from the plot, they are in fact closely related to the

¹⁶ Jie Fan, xu ni jue se shang ye hua quan yi de bao hu mo shi ['On the Protection Model of Merchandising Rights and Interests of Fictional Characters'] (Master Thesis, CASS Graduate School 2018) 3

¹⁷ Handong Wu (n 11) 54

association and the plot of the work through the impression in the reader's mind. The character exists by relying on the work, nevertheless it never attached to the work. The influence of the character may be higher than the work itself, and its vitality may be longer than the work.

The World Intellectual Property Organization (hereinafter referred to as WIPO) released a report on character merchandising right in 1994. This report defines 'character' and 'character merchandising'. Broadly speaking, the term 'character' includes fiction humans, fiction non-humans, and real persons. The first two types are collectively referred to as fictional characters.¹⁸ The WIPO report summarizes all the objects of merchandising rights as 'character', including both real and fictional characters, and even other objects of merchandising rights. The fictional characters discussed in this paper correspond to objects like 'fiction character'.

Artefactual theory in literature defines fictional characters as abstract objects that temporarily exist.¹⁹ Characters are among the most essential elements of creative works, and fictional characters, as imagined constructs, do not exist in reality. In Chinese academic discourse, fictional characters are also referred to as artistic images within works. They are artistic constructs with distinct names, personality traits, life backgrounds, and physical appearances, closely intertwined with the storyline. This definition typically encompasses characters, animals, or robots appearing in movies, TV shows, animation, and other media, as well as fictional figures in literary works.²⁰ Japanese academic circles define fictional characters as animals or robots that appear in manga, TV, film, and animation in a visually perceptible or audibly recognizable form.²¹

As could be seen from the above, regarding 'fictional characters', scholars generally agree that: fictional characters are artistic creation images with unique personalities in works, including visual images created in films, TV, comics, animations, and various literary works expressed through language. Virtual images could be designed as humans, animals, or other images. They often have unique names, identities, appearances, clothing, habitual actions, or mantras. Although fictional characters are derived from the work, they have independent value and can exist independently of other characters and storylines.

¹⁸ 'Character Merchandising – WIPO' (World Intellectual Property Organization, December 1994) <https://www.wipo.int/export/sites/www/copyright/en/activities/pdf/wo_inf_108.pdf > accessed 12 July 2024

¹⁹ Zoltán Vecsey, 'A Representational Account of Fictional Characters' (2015) *Analysis and Metaphysics* 68

²⁰ Handong Wu (n 11) 54

²¹ Nobuo Monya, Masao Handa, *50 Lectures on Copyright Law* (Qixue Wei tr, Law Publisher 1995) 35

(2) ELEMENTS OF FICTIONAL CHARACTERS

To determine the legal status of a fictional character, it is crucial to first define what constitutes a fictional character. Not all image designs can be recognized as fictional characters. Centrally, one must first identify the essential elements that substantiate a fictional character. Three elements are deemed essential for an image design to be legally recognized as a fictional character.

(a) Fictional characters are fictitious and are virtual artistic images created by the author, excluding real characters.

The WIPO report also did not include the representation of real characters in works into the scope of fictional characters. As a manifestation of human imagination, in addition to character images, fictional character images also include various character images created by the author, such as animals and robots. In works, particularly those with a storyline, fictional characters that do not exist in real life are typically created by authors based on their own life experiences and imagination, sometimes even defying real-world logic. In contrast, works featuring real people as main characters, such as biographies, tend to rely on real-world references. With advancements in holographic projection technology²² in recent years, modern techniques have enabled the analysis and digital reconstruction of real individuals' images, allowing them to be projected onto the stage as three-dimensional (3D)²³ holographic²⁴ images^{25, 26, 27}. However, the reappearance of images based on real people, even when their original performances are fully recreated using virtual technology, is ultimately a product of the behind-the-

²² Holographic projection technology is a technology that allows viewers to see 3D virtual characters without wearing 3D glasses. (Weiyang Li, *The 3D holographic projection technology based on three-dimensional computer graphics* (IEEE 11 December 2012) <<https://ieeexplore.ieee.org/document/6376651>>) accessed 12 July 2024

²³ The biggest feature of three-dimensional objects is that they are not plane images, but entities, because they can usually be observed and measured from three different directions of height, length, and width, usually abbreviated as 3D. The 3D virtual character means that the appearance of the character displayed is close to real and natural. (Definition from Collins Dictionary <<https://www.collinsdictionary.com/dictionary/english/three-dimensional>>) accessed 12 July 2024

²⁴ Holography is a method of recording light patterns. (Ahmed Elmorshidy, 'Holographic Projection Technology: the World is Changing' (2010) 3 *Journal of Telecommunications* 104)

²⁵ Holographic images are the three-dimensional image of these patterns which were recorded reproduced by technology. (Stephen A Benton and V Michael Bove Jr, *Holographic Imaging* (John Wiley & Sons 2008) 9)

²⁶ At the 2014 Billboard Music Awards ceremony held on May 18, 2014, a holographic image of Michael Jackson was performed at the MGM Grand Garden Arena in Las Vegas, Nevada. (Phil Gallo, 'Michael Jackson Hologram Rocks Billboard Music Awards: Watch & Go Behind the Scenes' (billboard, 18 May 2014) <<https://www.billboard.com/dissertations/events/bbma-2014/6092040/michael-jackson-hologram-billboard-music-awards>>) accessed 10 July 2024

²⁷ In 2017, in order to commemorate the 22nd anniversary of the death of singer Teresa Teng, the Japanese program Kin-suma 'resurrected' Teresa Teng on the spot, using holographic projection technology to reproduce the 1986 song singing scene. ('Japan Revives Teresa Teng with Holographic Images' (Dongjian, 28 May 2017 <<https://mp.weixin.qq.com/s/esDSXG6MQLdcQRzo5CZXqw>>) accessed 16 July 2024

scenes technical team. As such, these representations do not qualify as fictional characters.

(b) The character set of the fictional character is complete and coherent.

The complete fictional character image should be composed of three aspects: personality characteristics, plot, and reaction.²⁸ Personality characteristics are mainly composed of the virtual character's name, appearance description, and character characteristics. The plot refers to the detailed narrative progression of a fictional character within a work. Reactions encompass the character's behaviors in response to various stimuli, including interactions with people, objects, and events.²⁹ All of these characteristics constitute people's overall cognition and differentiation of characters. Therefore, to be legally recognized as a fictional character, the character's image should be fully described by the author, including a distinct personality, unique characteristics, and vivid plot descriptions. The name of a character is just a code name for a fictitious character and cannot replace a complete character to receive legal protection. At present, the discussion of fictional characters in law often focuses on the discussion of intellectual property rights. Therefore, simple character names in works, characters in pure artworks, or handicrafts could not be protected by copyright law, because they lack one of these three aspects.³⁰ Personality characteristics, plots, and reactions are important elements for fictional characters to be protected by the law.

(c) The fictional character image is original.

Protected fictional characters must be conceived and created by the author as original works. They must be independently developed and exhibit a certain degree of creativity, thereby excluding pre-existing characters.³¹ If there are prior characters, the subsequent characters could not be protected.³² Therefore, it must be a fictional character conceived by the author based on the elements perceived by his senses, and which is different from the character image created by others. Of course, there are exceptions. Based on the character image that is classified into the public domain, even if someone creates a previous work using this type of character image when

²⁸ Denglou Wu, lun xu gou ren wu xing xaing de zhi shi chan quan bao hu ['Discuss the Intellectual Property Protection of Fictional Characters'] vol.1 Copyrights (1999) 10

²⁹ Koichi Yoshimura, 'About Legal Protection of Character Products' (2009) vol.62 Patent 63

³⁰ Shaofang Fan, xu ni jue se shang ping hua quan de fa lv bao hu yan jiu ['Research on the Legal Protection of the Commercialization Right of Fictional Characters'] (Master Thesis, China University of Political Science and Law 2016) 11

³¹ Tian Lu, mei guo xu ni jue se de ban quan bao hu – jian ping DC man hua su Towle an ['The Copyright Protection of U.S. Virtual Characters—A Comment on the Case of DC Comics v. Towle'] (2016) Chinese Copyright 65

³² Haijun Lu, lun jue se de ban quan bao hu – yi mei guo de jue se bao hu wei yan jiu shi jiao ['On the Copyright Protection of Characters—A Study on Character Protection in the United States'] (2008) Intellectual Property 43

another person uses the image of the character again to create a work, it will not infringe on the characters in the previous works.³³

(3) CLASSIFICATION OF FICTIONAL CHARACTERS

The current classification of fictional characters is roughly divided into four categories, however, the fictional characters discussed in this paper are difficult to classify under the current classification method. Therefore, this research would refer to the general classification and the current development of the type of fictional character, then, based on the strength of the interaction between the character and reality, would make a new classification of fictional characters. This chapter will try to compare and distinguish several representative fictional characters from a new perspective and discuss different categories separately.

(a) GENERAL CLASSIFICATION

The characters in an artwork are certainly created by the author and constitute an expression of the author's thoughts, therefore the author could use different forms to create the characters. Fictional characters are also divided into different types according to their forms of expression and characterization. Some scholars have classified fictional characters into four categories: pure characters, visual characters, literary characters, and cartoon characters.³⁴

Literary characters are constructed through description and plot in novels and plays, relying entirely on language for their depiction. Their visualization depends solely on the reader's imagination, as their form of expression is conveyed through words rather than fixed imagery. Due to the highly subjective nature of this process, character representations can vary significantly among readers, resulting in differing perceptions of the same character within a single novel. Consequently, the physical characteristics of literary characters remain inherently fluid and difficult to define with precision.

Visual characters originate from live-action films and are typically portrayed by real actors in various media, including films, TV series, and online dramas, while generally excluding documentary productions.³⁵ The classification contains some of the characteristics of literary and cartoon characters. Visual characters, unlike literary characters, have a visible appearance because they are portrayed by real actors in films, TV shows, or theater. This visual representation makes them easier to recognize compared to characters that exist only in text. However, a unique aspect of visual characters is that the same actor can portray multiple different characters, which

³³ Pan Yu (n 15) 9

³⁴ Haijun Lu (n 32) 44

³⁵ Haijun Lu (n 32) 45

means the actor's appearance can be associated with various roles. Conversely, the same visual character can be portrayed by different actors over time, each bringing their own interpretation and appearance to the character. This interchangeability adds complexity to the identity of visual characters because their portrayal can vary significantly depending on the actor.

A pure character is a character that stands alone and does not appear in any work. At the present time, countries have different degrees of copyright protection for characters, and characters themselves are generally not protected as subjects of copyright law.³⁶ Typically, the legal protection of a character relies on the protection of the work to which it belongs. Conversely, a purely independent character that does not originate from any specific work receives relatively weak legal protection or, in some cases, none at all.³⁷

Cartoon characters refer to all line paintings expressed in visually simple forms and have a wider range than animation characters.³⁸ The term refers to a fictional character that exists in a two-dimensional realm³⁹. In other words, cartoon characters are fictional characters that exist in animation, comics, and games. Generally known as ACG fictional character⁴⁰.

Visual characters and literary characters are no longer within the scope of this paper. Both classifications retain a common feature that is the instability of the character image. Visual characters may be played by different actors. However, an actor's face is not tied exclusively to a particular role. Likewise, a character's image is

³⁶ Yana Lin, Jing Song, 'On the Legal Mode of Protection to the Fictional Characters in the USA and Its Reference'(2003) Journal of Guangxi Institute of Political Science and Law 17

³⁷ Evidence of this could be found in the US, where the DeCosta case tells of a fictional character created by actor Victor DeCosta called 'Paladin'. The character is not part of any work and is only used in public appearances such as carnival and rodeo. However, the characters appeared in the CBS (Columbia Broadcasting System) television series 'Have Gun Will Travel', including names, physical appearance, characteristics and appearances, and many other elements are very similar with Paladin. The writers claim that the character was original and that the 'shocking similarity' is purely coincidental. In the end, the U.S. Court of Appeals for the First Circuit ruled that the character created by the actor Dexter could not get any legal relief because it was not part of any production, although the character was substantially like that in CBS's TV series. (*Columbia Broadcasting System, Inc. v. DeCosta*, 377 F.2d 315 (1st Cir. 1967))

³⁸ Shinichiro Harata (n7) 2

³⁹ Two-dimensions means the world of two-dimensional plane, especially the plane world composed of Animation, Comic and Game. They are also called ACG for short. As a term widely used in online tribal culture, two-dimensions could not only refer to the two-dimensional world created by Animation, Comic and Game, but also refer to the subcultural community formed by ACG enthusiasts, and also refer to the cultural industry chain formed by ACG and related industries. (Yan Jun Shao, Yu Wang Wang, *Breaking The Wall: Key Words of Network Culture* (Sanlian Bookstore 2018) 7)

⁴⁰ Riichi Ushiki, manga kiyakuta- no tyosakuken hogo ['Copyright Protection for Comic and Cartoon Characters (1) – A Study to Establish Character Right'] (2001) vol.54 Patent 12

not restricted to a single actor. Literary characters exist solely through textual descriptions, and their visual representations vary depending on individual interpretations of language. This paper explores the possibility of fictional characters attaining legal personhood. However, characters with identical attire, names, or story backgrounds lack a fixed image and the stability required for uniform legal recognition. As a result, they cannot be regarded as unique "persons" in a legal sense. Therefore, these two types of characters will not be analyzed in the following discussion.

(b) ACG FICTIONAL CHARACTER CLASSIFICATION

Broadly speaking, ACG fictional characters encompass not only those appearing in ACG works but also characters created using similar techniques as cartoon characters. That is, they are depicted through colors and lines and follow similar artistic creation methods.⁴¹ From the method of image design, pure characters are also a type of ACG character, so for the convenience of the following discussion, these two types of characters may be collectively referred to as ACG fictional characters.

In the process of commercialization of virtual characters, three distinct models of commercialization may be identified. The utilization of these models has allowed virtual characters to interact with reality in novel and unprecedented ways. These models are categorized based on the strength of interaction between the characters and the real world, as well as the existence and development modes of virtual idols, a new type of fictional character supported by virtual technology and modern multimedia technology.

The first model concerns pure work-based characters, such as general ACG fictional characters. The classification refers to characters that are not separated from the continuity of the work and may be regarded as non-interactive characters. The first business model innovation is the commercial use of character images. For example, from the 1930s onwards, in order to make full use of the popularity of the character image and create more economic value, Disney Company has authorized some manufacturers to use the cartoon image in their toys and clothing products, or use Marvel's cartoon characters to make movies with real-life interpretation.⁴² In this mode, the audience's overall understanding of character and characteristics comes from the promotion and development of the plot of the work. The two-dimensional fictional character is not associated with the three-dimensional world, as the character still only exists in its own story.

⁴¹ Mengmeng Guo, 'er ci yuan xu ni ou xaing de sheng chan ji qi jie shou xin li ['The production and acceptance of the second dimension virtual idols'] (2019) Media Criticism 16

⁴² Shanshan Li, lun ren ge quan shang ping hu ayu xu ni jue se shang ping hua zhi guan lian ji qi bao hu mo shi ['The Connection between Commercialized Identity and Commercialized Fictional Character and Its Protection Mode'] (Master Thesis, Nanchang University 2015) 10

Virtual idols are characters that can exist independently of a specific work. One of their defining characteristics is that they may temporarily detach from their original context or function without reliance on an existing work. Another feature is that they interact with the real world in their own name, image, and characteristics. As a result of this, they have considerable popularity in the real world and become virtual idols with fan groups.⁴³ In the eyes of fans and the public, they are not very different from real human idols. According to the type of interaction, they are divided into two sub-categories.

The second model refers to the semi-interactive virtual idol. This type of character is one that is born from a continuous work, however at the same time it is also separate from the plot of the work to carry out commercial activities in the real world.

For example, Lynn Minmay, the heroine of *The Super Dimension Fortress Macross*, gained widespread popularity as one of the earliest virtual singers in history. Although her voice was provided by a real person, the character itself became a cultural icon. As early as 1982, Japanese record companies released a personal album under the name Lynn Minmay, reinforcing her status as both an animated character and a singer.⁴⁴ The enthusiastic animation fans have also set up a fan support club for the character 'Lynn Minmay'.⁴⁵ From then on, applying the operating model of the idol industry, packaging characters from ACG works or a certain two-dimensional style character into virtual idol, and publishing albums or publishing photos for them has gradually become the norm in the Japanese ACG industry.⁴⁶

This also led to a second innovation in the commercialization of ACG fictional characters. These characters move beyond the scope of their original works and evolve into virtual idols in the real world, engaging in additional business activities based on the personalities established in their original narratives. Not only experiencing life in the original works but also interacting with people in the real world.

The third model refers to the fully interactive virtual idol. While they may be thought of as similar to the 'pure character' identified earlier, these idols do not originate in a story-telling work. They are, however, active in the real world under their own name. A fully interactive virtual idol can therefore be considered a character which has a personality, a name, an image, hobbies, etc. and who acts like a real person by living and working in the real world and interacting with people. This type of fictional character can be exemplified by 'Hatsune Miku'. Hatsune Miku was originally released

⁴³ Hongwei Zhan, wang luo xu ni ou xiang ji fen si qun ti ren tong jian gou ['Network Virtual Idols and Fan Groups Identify with the Construction'] (2019) Young Journalist 7

⁴⁴ Menmen Guo (n 41) 16

⁴⁵ xMIKE, 'The First Generation of Galaxy Singer Lynn Minmay : the Interlacing of the Two-dimensional and Three-dimensional' (ZAZU, 27 August 2019) <<https://zazu.cc/talks/17424>> 7

⁴⁶ Hanning Gao (n 2) 75 accessed 06 May 2024

in 2004 by Crypton Future Media as a music creation software utilizing Vocaloid, a singing synthesis technology that enables users to compose music by processing musical notes, lyrics, and vocal outputs.⁴⁷ Moreover, Hatsune Miku was the first virtual idol to hold a concert using holographic projection technology.⁴⁸

Although Hatsune Miku is not the world's first virtual idol, Hatsune Miku is still regarded as a representative figure in the virtual idol industry. This is obviously due to the revolutionary breakthrough brought about by technological advancements. Hatsune Miku's rise to popularity may be attributed to two key technological advancements: the development of the VOCALOID speech synthesis engine and the refinement of holographic projection technology.⁴⁹ Neither was specifically designed for virtual idols; however, both have been widely adopted in the idol market across various performing arts and creative practices.

For Hatsune Miku, the speech synthesis engine gives her the ability to sing, while holographic projection enables her to assume physical form. When contrasted with her predecessors such as Lin Mingmei and Fujisaki Shiori, Hatsune Miku does not always require real voice actors; however, she can still perform solo concerts. Therefore, she has undoubtedly become the most complete virtual idol with professional ability in history⁵⁰, although technically Hatsune Miku is only a sound source library.⁵¹ However, after the developer's anthropomorphic marketing, she is not only a fixed animation image, but also a first-line 'popular singer.' On this basis, a series of virtual idols which use the traditional idol operation mode to carry out activities, have been born and are engaged in various professions.

This raises the question: *Can a character that is initially provided with basic background information and is not part of a continuous narrative still be considered a fictional character?* The answer is affirmative. Virtual idols, although starting with minimal background, develop their completeness through real-time interactions with the world. Their modes of activity often resemble those of real-world idols. By adhering to their initial character settings and responding dynamically to real-world interactions, these virtual idols cultivate their own personality traits, storylines, and behaviors. This continuous engagement allows their character integrity to evolve over time, and the

⁴⁷ Agence France-Presse, 'Computer-animated Pop Star Miku Hatsune Takes Japanese Music Scene By Storm.' (The National. Abu Dhabi Media. 14 June 2011) <<https://www.thenational.ae/world/asia/computer-animated-pop-star-miku-hatsune-takes-japanese-music-scene-by-storm-1.428613>> accessed 10 July 2024

⁴⁸ Hanning Gao (n 2) 75

⁴⁹ Zeyao Huang, *quan xi shi dai ou xaing wu tai de xin sheng – quan xi quan xi tou ying ji shu dui wu tai de ying xiang* ['The Rebirth of the Idol Stage in the Holographic Era: An Analysis of the Influence of Holographic Projection Technology on the Stage'] (2018) vol. 4 *New Media Research* 34

⁵⁰ Noboru Saijo, Eita Kiuchi and Yasutaka Ueda, 'double Structure of Real Space and Virtual Space Where Idols Live ~ Match and Dissociation of Character and Idol ~' (2016) vol.26 *Bulletin of Edogawa University* 199

⁵¹ Anime News Network. 'Hatsune Miku Virtual Idol Performs 'Live' Before 25,000.' (Anime News Network, 23 August 2009) <<https://www.animenewsnetwork.com/news/2009-08-23/hatsune-miku-virtual-idol-performs-live-before-25000>> accessed 16 July 2024

public's perception of their personality becomes more defined with each interaction. Thus, the real-world development and engagement of a virtual idol can be seen as an ongoing narrative that contributes to the character's completeness.

D. DISCUSSION ON THE POSSIBILITY OF ACG FICTIONAL CHARACTERS BEING REGARDED AS LEGAL PERSONS

The previous chapters have introduced and classified fictional characters and provided a new categorization of ACG fictional characters, which will be further discussed in this paper. The primary objective of this paper is to explore whether ACG fictional characters may be recognized as subjects of intellectual property rights. Before delving into this topic, it is essential to determine whether ACG characters are capable of being recognized as legal persons under the law. This involves examining whether these characters can possess certain human rights akin to real people and become subjects of legal rights. Therefore, this chapter focuses on the following two questions:

A. Does the boundary of the law have the possibility of expansion, and could ACG characters be regarded as possessing legal personality?

B. If it is possible, should all ACG characters be granted legal personality?

(1) THEORETICAL DISCUSSION ON ACG'S FICTIONAL CHARACTERS BEING REGARDED AS LEGAL PERSONS

(a) TREATING ACG FICTIONAL CHARACTERS AS OBJECTS

As identified earlier in the paper, the current legal research on the protection of fictitious characters concentrates on the protection of intellectual property rights. For example, whether a character could be regarded as a work is a classic topic in legal literature. Undoubtedly, pictures and illustrations may be classified as 'works' under copyright law. However, a character corresponds to more than a mere picture, as it possesses a name, personality, and a life (albeit, in a hypothetical sense) therefore rendering it a comparatively abstract concept.⁵² This means that the author naturally owns the copyright for each illustration he draws. However, these illustrations only represent one aspect of the character's expression, not the existence of the character itself therefore, the character itself is not necessarily protected by copyright. Similarly,

⁵² In the case Popeye's tie, the court denied that a single character in the comic could be treat as a copyrighted work. The reason is in the complete comic series, each character drawn corresponds to a copyright-protected comic, therefore, it is impossible to leave the specific comics and treat the character itself as a work. The so-called character or role is an abstract concept, which embodies the specific personality from the concrete expression of continuous comics. Their image is not the specific expression itself, the character itself cannot creatively express thoughts or emotions. (The Supreme Court of Japan, 17 July, 1997 (Civil Case Vol. 51, No. 6, page 2714))

comics, animations, and other artistic creations that depict characters, behaviors, and personalities in a coherent form are considered copyrighted works. However, the individual characters within them are not necessarily granted copyright protection. In other words, even if the author is the person who created the character, the character could not be 'owned' by them. Virtual idols are designed to interact with their audience in real-time and evolve based on ongoing engagement and feedback. Their dynamic and evolving nature means that the character's identity is continually shaped by a wide range of inputs and influences beyond its initial creation. The character becomes a living entity that grows and changes with each interaction, thereby rendering it impossible for the initial creator to maintain exclusive ownership.

In law, there is a clear distinction between subjects and objects: persons are subjects of rights, while things are objects of rights. Things, whether tangible or intangible, can be owned by humans.⁵³ The fact that an ACG character is not owned by any individual does not exclude it from being considered an object under the law. Objects can be tangible, like physical goods, or intangible, like intellectual property rights.⁵⁴ Intellectual property rights, as intangible property rights, demonstrate that it is possible to own property rights over non-physical entities. In legal terms, ownership implies a strong and specific meaning. Modern ownership is characterized by the owner's absolute freedom to use, acquire, and dispose of property. For instance, the right of ownership permits an owner to destroy a universally recognized and valued painting or antique.⁵⁵

(b) TREAT ACG FICTIONAL CHARACTERS AS SUBJECTS

In the previous discussion, the characters were regarded as the object of rights, and their legal status was discussed. The next focus of this paper is to discuss the possibility of treating the character itself as the subject, which possesses the general rights that a natural person has over the character, such as those of ownership, dominance, and the right to obtain benefits. In other words, discuss the possibility of ACG fictional characters having rights and becoming the subject of rights.

What the law defines as a human being is not always clear and universal. For example fertilized eggs, embryos, fetuses, have biological significance in the process of becoming humans. Their genetic makeup corresponds to that of a human being; however, they are not considered human by the law.⁵⁶ Therefore, in extreme cases, killing a fetus would not be considered murder, and stealing a fertilized egg in a test tube would not be considered kidnapping. The law does not explicitly define when an

⁵³ Shinichiro Harata (n 13) 2

⁵⁴ Riichi Ushiki (n 40) 12

⁵⁵ Joseph L Sax, *Playing darts with a Rembrandt: Public and private rights in cultural treasures* (University of Michigan Press 2001)

⁵⁶ Guang'an Chen, lun xu ni yu xian shi mao dun guan xi zhong ren de zhu ti xing jia zhi ['The Value of Human Subjectivity in the Contradiction between Virtual and Reality'] (2008) *Journal of Northeastern University (Social Science Edition)* 110

individual acquires legal personhood or when such status is lost. Scholars from various countries have many different views on this. At least in Japan and China, the birth and death of a person are not the nodes that determine the qualifications of a person in the legal sense.⁵⁷ Whether the object in the discussion is regarded as a person in law could have a decisive influence on its result, however, the boundary on this matter remains ambiguous.

On the other hand, the law could also treat things that are not biological at all as a person. A typical example is a so-called company. A company cannot be a natural person; however, it is regarded as a person under the law. Regarding the conceptual existence of the company as a legal person and owning independent rights and obligations, it is to provide the convenience necessary for various activities in society. In social practice, when the company acts as a legal person for business activities, there is no inconvenience or discomfort in social life.

From the above, we understand that the law does not always recognize biologically obvious humans as persons, and it can also grant legal personhood to non-human ideological entities. In the context of ACG fictional characters, these examples suggest that while it is currently challenging to treat such characters as legal persons based on existing social practices and legal frameworks, it is not entirely outside the realm of possibility. The legal definition of a person can evolve and expand to include new types of entities.

(c) DISCUSSION ON THE TYPES OF ACG FICTIONAL CHARACTERS THAT MAY BE REGARDED AS LEGAL PERSONS

This study argues that conditions must be met for a fictional character to be considered a legal person. Simply put, according to the classification in Chapter II, general ACG fictional characters that do not interact with the real world should not be granted legal personality. The characters that really have the possibility of being recognized as humans are actually 'virtual idol-type characters', that is, semi-interactive and fully interactive ACG fictional characters. They are better positioned to acquire such rights as they are not just fictional. On the contrary, they are capable of existing in capacities akin to that of real, human life. This personification does not imply that the virtual idol's design closely resembles a real person; rather, it signifies that the form presented appears realistic, thereby, breaching the wall between the two-dimensional and the three-dimensional. For the fan groups of virtual idols, their idol is just one of the celebrities in reality. To explain this point, the forthcoming section will establish [OBJ:OBJ].

⁵⁷ There are various theories about the birth of human beings, such as the beginning of childbirth theory, partial exposure theory, complete exposure theory and independent breathing theory. Regarding human death, death is identified according to the so-called three-symptom theory, however, there are also disputes as to whether 'brain death' should be regarded as human death. (Xiang Zhou, tai er sheng ming quan de que ren yu xing fa bao hu ['Confirmation of the 'Right to Life' of the Fetus and the Protection of Criminal Law'] (2012) Law 51)

(2) THE DIFFERENCE BETWEEN GENERAL ACG FICTIONAL CHARACTERS AND VIRTUAL IDOLS

There are many ambiguities and ambiguities between virtual idols and general ACG characters. This paper strives to make an accurate distinction between similar concepts. To exemplify the difference, the famous animation characters Pikachu and Kumamon may be considered. The reason for taking these two as examples is that they are both representative of successful operations in general ACG fictional characters and virtual idols, and they represent the most significant difference between the two types of characters.

Pikachu is a mouse that is capable of generating powerful electricity.⁵⁸ Originally, it came into existence as a character in the game Pokémon. As the popularity of the work increased, Pokémon was adapted into comics and animation and the character had a meaningful impact on the commercialization of virtual icons universally. In the past two decades, the copyright owners of Pokémon products represented by Pikachu have earned more than US\$90 billion through product sales and derivative licenses, consequently ranking No. 1 in the category of film, animation, and game. This number is higher than that of Disney's Mickey Mouse (\$70 billion) and Star Wars (\$65 billion), and more than three times that of Marvel movies (\$28 billion).⁵⁹

Kumamon was initially designed as a mascot, and therefore, did not originate as a virtual idol. Mascots must be represented by real people, therefore rendering the mascot's original design an anthropomorphic image.⁶⁰ Given Kumamon's rising popularity, he was appointed as a temporary employee of the prefectural government in 2010. Due to his outstanding performance, Kumamon was appointed as Sales Manager and Happiness Manager of Kumamoto prefecture in 2011.⁶¹ Kumamon represents a fusion of anime character design and virtual star branding, fostering regional popularity. It has greatly increased the popularity of Kumamoto Prefecture. It may be argued that Kumamon has appreciably contributed to the local tourism industry, which has experienced prosperity in recent years. The development of surrounding industries brought economic benefits of \$1.2 billion to the local area within 2 years.⁶²

In accordance with formerly clarified rationale, in these two examples, Pikachu is a general ACG fictional character that should not be regarded as a legal person,

⁵⁸ Pokémon Official Homepage, <<https://www.pokemon.com/us/pokedex/pikachu>>

⁵⁹ 'With Revenue Exceeding US\$90 Billion, the Road to Success for the First Animation IP Pikachu' <<http://money.163.com/19/0522/20/EFQBMS5F002580S6.html>>

⁶⁰ Yunjing Li, 'Research on Brand Strategy of Featured Towns Based on Representative Mascots'(Master Thesis, Jiangnan University 2019) 7

⁶¹ Kumamon Official Homepage, <<https://kumamon-official.jp/default.html>>

⁶² Xinhnetian, 'How did Kumamon Become the 'Net Celebrity' Mascot That has Swept the World?'(SocialBeta, 19 January 2016) <<https://socialbeta.com/t/how-kumamon-become-the-most-popular-bear>>

whereas Kumamon is a virtual idol with the possibility of being regarded as a legal person. The specific reasons would be analyzed as follows:

(a) THE SEPERATION OF REALMS

One notable difference between Pikachu and Kumamon lies in the distinct fictional and real-world contexts they inhabit. Although they are both two-dimensional characters, Pikachu's lively image only exists in games, comics, and animation works. No one is able to interact with Pikachu; in other words, Pikachu is just an actor in Pokémon.⁶³ The storyline is only able to advance upon Pikachu's engagement with other characters within the fictional Pokémon realm. Therefore, the audience is incapable of interacting with Pikachu in a first-hand capacity. On the contrary, Pikachu only exists in 'another world'.

Kumamon is different. Kumamon's behaviors and actions were designed and planned to ensure seamless interaction with the real world.⁶⁴ Kumamon is a virtual character in the real world. As a government worker in Kumamoto Prefecture, he has a dedicated team assigned to the task of posting his daily schedules on social media. The department where he works also has specialized staff to answer calls, and additionally, he is also responsible for sales. At the same time, it must assume the functions that the director of the sales department should perform.⁶⁵

To enhance authenticity, the planning team staged several events involving Kumamon. In 2010, they orchestrated his "disappearance" during a business trip, portraying him as captivated by the allure of the big city. In 2012, they created a storyline about his missing blush, and in 2015, he was "demoted" by the governor of Kumamoto Prefecture due to a failed weight-loss attempt. Each of these incidents followed formal societal procedures, including the organization of press conferences, the formation of special investigation teams, and the referral of cases to police forces.⁶⁶ People all over the world could directly participate in and influence Kumamon's activities through the Internet or in reality. In 2014, Kumamon was nominated by netizens to participate in the 'ice bucket challenge'.⁶⁷ On one hand, these activities have created themes for Kumamon and injected further characteristics into the entity. On the other hand, through positive interaction with the masses, the image of Kumamon has become more prominent, subtly increasing people's belief and

⁶³ Sirui Mu, qian xi xu ni ou xiang de ding wei ji qi ta dong man xing xiang de qu bie ['Analysis of the Positioning of Virtual Idols and the Difference from Other Cartoon Images'] (2018) Drama House 89

⁶⁴ Sohu News, 'Kumamon's Secret to Bringing Income to the Town' (Sohu News, 9 October 2017) <https://www.sohu.com/a/197070657_247689 >

⁶⁵ Kumamon Official Homepage (n 51)

⁶⁶ Lingxiao Liu, ji xiang wu zai lv you ping pai tui guang zhong de she ji yu yun yong ['The Design and Application of Mascots in Tourism Brand Promotion.'](Master Thesis, Qufu Normal University 2019) 20

⁶⁷ Xuefang Rong, 'The Influence of Cute Culture on Brand Character Image' (2020) vol.28 Today's Media 99

awareness that Kumamon is really living in reality.⁶⁸ Kumamon like everyone else, living in this world and doing his own work every day. It is only because of this strong interaction with reality that Kumamon is better described as a virtual idol than a virtual character.

(b) DIFFERENT MODES OF BUSINESS ACTIVITY

As an excellent and popular work, Pokémon has created interesting and lively cartoon characters, which are widely loved. The primary profit model for ACG fictional characters, such as Pikachu, extends beyond revenue generated from the original work. Like most cartoon characters, Pikachu's popularity and appeal are leveraged for commercial purposes to attract consumers. This is achieved by licensing the character's image for merchandise production and engaging in promotional activities to generate income.⁶⁹ Examples include printing Pikachu-themed clothing, accessories, and dolls.

Kumamon's operating model is completely different. The core of Kumamon's operating method is a high degree of personification. In the initial stage of the design, the designer sought to ensure that Kumamon would appear as real as possible, and thus thoroughly considered the possibility of action when designing the coat, so that it has a feature that is completely different from other mascots: Kumamon could perform fine movements in real situations that many other mascots could not.⁷⁰

Kumamon's popularity is primarily driven by internet communication, with the operation team effectively utilizing social media to maintain a high level of public engagement. As a result, Kumamon resembles a real person by updating Twitter and Facebook daily, sharing his lived experiences, and making frequent media appearances. He has participated in various Japanese television programs, including variety shows, news broadcasts, and even scripted productions. Notable examples include appearances in TV Asahi's "Music Station", Fuji TV's "Mezamashi TV", and NHK's regional programs promoting Kumamoto Prefecture. Additionally, Kumamon has taken part in advertising campaigns and international events in China, such as in Shanghai and Dalian, further expanding his influence beyond Japan.⁷¹ Compared to other mascots, Kumamon is a lively character, which allows the audience to perceive him as a young boy who resides in the real world, who loves to play, who is characteristically timid, thereby rendering him as ordinary as anyone else. His vivid character makes it so that the audience cannot help but overlook the fact that the character is played by the person in the holster.⁷²

⁶⁸ Sirui Mu (n 63) 89

⁶⁹ Jie Fan, 'On the protection model of commercialized rights and interests of fictional characters' (Master Thesis, CASS Graduate School 2018) 8

⁷⁰ Sohu News (n 64)

⁷¹ Xuefang Rong, ke ai wen hua dui ping pai IP de ying xiang ['The Impact of 'Lovely Culture' on Brand Image'] (2020) 28 Jin Media 9

⁷² Lingxiao Liu (n 66) 21

Both are fictional characters that have generated considerable benefits. In the eyes of the public, Pikachu has always been a likeable character derived from animation, while Kumamon is undoubtedly a virtual idol in the eyes of the public. The key contributors to this difference are the conditions which allow a fictional character to become a virtual idol in accordance with public perception.

(c) CONDITIONS FOR BEING RECOGNISED AS A VIRTUAL IDOL

From the comparison in the previous section, it is clear that the primary difference between general ACG fictional characters and virtual idols lies in their personification, which arises from their interaction with reality. So far, the standard of virtual idols considered in this paper is clear. First, the core concept is, virtual idols are virtual characters designed based on the real world. They have evolved into public figures and have a certain number of fans due to the promotional activities of the planning team. Essentially, the difference may be distinguished in accordance with the following: virtual idols are fictional characters living in the real world, and general ACG fictional characters are characters that exist in fictional stories and fictional world.

Firstly, the background stories of virtual idols are set in the real world. In contrast to other ACG characters, whose designs serve the plot, their narratives are typically developed first, followed by the creation of their character images.⁷³ The method of operating a virtual idol is more akin to the formulation of a biography. By developing the virtual idol's origin, life experience, personality, hobbies, friends, etc., the virtual idol appears more real and their characteristics are refined.

Secondly, virtual idols need a profession which corresponds to those which truly exist. The choice of this profession needs the potential to evolve into a public figure before it is possible to transform virtual characters into idols. Examples may include singers, designers, writers, actors, etc.

Thirdly, virtual idols have left some traces in the real world, which could be tangible or intangible, such as records, songs created or sung, something designed, certain literary or artistic works created, or have made contributions to a certain cause and achieved certain results or effects.

Fourthly, a virtual idol should maintain some level of interaction or connection with the real world to engage the audience. Even if a virtual character is designed to have a shy personality that avoids direct fan interaction, there should still be small streams of information shared with the public. For example, updates about friendships, workplace experiences, or other everyday moments can help sustain engagement.

⁷³ Sirui Mu (n 63) 114

Fifthly, virtual idols should have a certain long-term existence. For example, a virtual character that exists only for a project and does not carry out long-term business activities could not form a stable and lasting fan base, therefore, this kind of virtual character should not be recognized as a virtual idol.

If virtual characters that meet the above conditions can be classified as virtual idols, they may also be considered fictitious entities with the potential to attain legal personhood. Once these conditions are further specified, such as the number of fans, works, and public recognition, criteria for evaluating virtual idols' legal person qualification applications could be partially established.

(d) SHOULD VIRTUAL IDOLS HAVE LEGAL PERSONHOOD?

With the advancement of modern technology and the widespread popularity of visual media such as movies and television, the public has gained a more efficient means of entertainment and knowledge acquisition. The traditional process for creating real-life celebrities typically involves several stages: discovery, selection, training, development, branding, and market testing. Initially, talent scouts search for potential stars, selecting individuals with promising qualities. These selected individuals then undergo rigorous training to enhance their skills and develop their persona. After training, they are shaped into marketable personalities through various development strategies. Next, they are branded and packaged to appeal to target audiences. This is followed by market testing, where their appeal and popularity are assessed through smaller-scale public appearances and performances. Those who succeed in market testing gain a certain level of popularity, prompting the company to invest further in their branding and promotion. These stars are then gradually introduced to higher profile performing arts platforms, increasing their visibility and success.⁷⁴ With idols, admirers will naturally appear. The growth of celebrities is often accompanied by the expansion of fan groups. Especially in recent years, with the development of new media, the growth of fan groups has constituted a cultural phenomenon that cannot be ignored.

In the traditional star system, idols are independent and unique figures of admiration. Their words, actions, fashion choices, and even lifestyle, covering clothing, food, housing, and transportation, often set trends and are widely emulated by the public. In this form of idol worship, the audiences remain passive receivers, with their aspirations and life goals significantly shaped by their idols. Under this system, where real idols dominate popular culture, the masses play a largely passive role in cultural formation.⁷⁵ The emergence of virtual idols has transformed the relationship between idols and the public. It is no longer a dynamic of imitation and emulation; instead,

⁷⁴ Zhenzi Qin, dang zhen shi zao yu wan mei – xu ni ou xiang tiao zhan chuan tong ou xiang ['When Reality Meets Perfection-virtual Idols Challenge Traditional Idols'] (2007) Business Manager 83

⁷⁵ Shuangfen Wang, xu ni ou xiang wei he shou zhui peng ['Why Are Virtual Idols Popular'] (2019) Shanghai Information Technology 75

virtual idols are shaped by public creation. Due to their non-uniqueness and reproducibility, everyone has the opportunity to interpret and create their own version of "Hatsune Miku" in their own way.⁷⁶

Virtual idols are virtual characters produced artificially through computer graphics and other means. These virtual characters have met the psychological needs of a large number of two-dimensional netizens and have been loved and sought after by considerable audiences.⁷⁷ Although virtual idols do not have specific material carriers in real life, they have a strong fan base, who support them, interact with them and allow them to release albums, organize fan assemblies and large-scale concerts, just like real idols. This kind of three-dimensional fan behavior is gradually becoming common in the two-dimensional world. The wall of dimension does not completely distinguish real idol and virtual idol.⁷⁸

In recent years, the rise of virtual singers, movie stars, models, and presenters has drawn significant attention away from their real-world counterparts, including traditional singers, actors, models, and hosts. Additionally, there is a vast market for derivative products such as posters, toys, theme parks, and video games, all of which contribute to long-term cultural and economic value. These virtual digital stars offer unique advantages over real celebrities and possess immense market potential.⁷⁹ With technological advancements, virtual idols will become increasingly capable of performing various tasks. However, if regulations are not implemented in a timely manner, this could lead to market instability and intensified competition.

E. THE STATUS CHANGES OF VIRTUAL CHARACTERS IN LAW MIGHT BE BROUGHT BY THE LEGAL PERSONALITY OF A VIRTUAL IDOL

The above summary of the necessary conditions for being identified as a virtual idol is mainly to elicit the following point of view, whether a virtual character could be regarded as a legal person requires qualification review. If a special department is responsible for the legal personality of the virtual idol, review and registration would protect the well-known character better.

⁷⁶ Xu Zhang, *cong xu ni zhi zao dao zhen shi xiao san – yi chu yin wei lai wei li lun shu zi ji shu dui dang dai ren de ying xiang* ['From Virtual Manufacturing to Real Dissipation: Taking Hatsune Miku as an Example to Discuss the Impact of Digital Technology on Contemporary People'] (2016) Art Corner 15

⁷⁷ Leiyu Song, *xu ni ou xiang fen si can yu shi wen hua de te zheng yu y iyi* ['The Characteristics and Significance of Participatory Culture of Virtual Idol Fans'] (2019) vol. 41 Modern Communication (Journal of Communication University of China) 26

⁷⁸ Shuangfen Wang (n 75) 76

⁷⁹ Yong Gao, Siwei Ma and Bowen Song, *guo nei xu ni zhu bo chan ye lian fa zhan xian zhuang ji qu shi yan jiu* ['Research on the Development Status and Trends of Domestic Virtual Anchor Industry Chain'] (2020) vol.6 New Media Research 10

(1) BENEFITS OF HAVING A LEGAL PERSONALITY

As mentioned above, most industries in which virtual idols are engaged fall within the performing arts sector. Virtual idols often take on roles as singers, actors, models, or composers. Due to their highly anthropomorphic characteristics, society may struggle to differentiate some virtual idols from real individuals in terms of their image or business scope. Given that corporations can attain legal personhood, it is worth considering whether virtual idols, though currently lacking independent legal status, could be granted similar recognition. Drawing on corporate legal frameworks as a reference may provide a basis for ensuring their stability, intellectual property protection, and long-term commercial viability.

If a virtual idol passes the review, is recognized as a legal person and has an independent personality, that virtual idol could sign a contract, undertake performing arts activities, and become brand spokesperson, all in their own name. Most significantly, their performances might be regarded as similar or equivalent to human performances, which means that virtual idols themselves have the right to be paid independently. From the perspective of the main occupational types of virtual idols, they may mainly benefit from the protection of neighboring rights.

Based on the assumption of a registration system, further reasonable legal considerations can be made. Virtual idols, if granted legal personhood, may own independent assets, receive remuneration, and assume liabilities within defined legal frameworks.

Virtual idols are operated by technicians behind the scenes. As a legal person, as the managers could not maliciously harm the interests of the company, the behind-the-scenes management and planning team should conduct virtual idol activities without abusing the character image and maliciously subverting the character setting.

If the misuse of a virtual idol leads to infringement, the principle of piercing the corporate veil could be applied by analogy. In such cases, liability would fall on the primary individual responsible for managing the virtual idol. However, if the infringement arises from the idol's normal operations, the virtual idol could assume liability under its own name and assets. Conversely, if the virtual idol itself is infringed upon, a legal representative could file a lawsuit on its behalf.

The advantage of this is that no matter how the behind-the-scenes team members change, it might minimize the possibility of inconsistencies in the role images of the virtual idols due to the difference of the behind-the-scenes personnel, and it might also solve part of the current situation that fictional characters are difficult to be protected by law to a certain extent.

(2) DEFECTS OF HAVING LEGAL PERSONALITY

First, the above point of view does not protect all types of fictitious characters. Secondly, in the protection of virtual idols, the scope of protection of this policy is limited to virtual idols that could act as performers, such as singers, actors, and virtual youtubers and so on. On the contrary, virtual idols who seek to engage with the real world in other capacities may not receive the benefits outlined above.

F. CONCLUSIONS AND FUTURE PROSPECTS

The legal recognition of ACG fictional characters as legal persons would mark a fundamental shift in the understanding of legal personhood and intellectual property rights. This paper's findings suggest that while existing legal frameworks primarily classify fictional characters as objects of rights, there is potential to expand this definition to include characters that engage in significant real-world interactions and exert tangible influence, such as virtual idols. With their dynamic, evolving personas and strong fan communities, virtual idols challenge traditional concepts of authorship, ownership, and liability, underscoring the need for legal reforms to address these complexities.

Granting legal personhood to virtual idols could enhance the protection of their commercial activities, ensure fair compensation for their contributions, and acknowledge their cultural significance. However, it also presents challenges, such as determining the extent of their rights and obligations and addressing the potential impact on the creators behind these characters.

Future research should focus on developing clear criteria for legal personhood, exploring the ethical implications of such recognition, and proposing comprehensive legal frameworks that balance the interests of virtual characters, their creators, and society. As technology continues to advance, the lines between virtual and real entities will blur further, necessitating ongoing legal and academic exploration to ensure that our laws evolve in step with these changes.

Moreover, interdisciplinary collaboration between legal scholars, technologists, and cultural theorists will be essential to fully understand and address the implications of virtual personhood. As virtual idols and other digital entities become increasingly integrated into our daily lives, the need for robust legal frameworks that protect their rights, and the interests of all stakeholders will become more pressing.

In conclusion, this paper underscores the importance of adapting our legal systems to the realities of the digital age. By recognizing the potential for ACG fictional characters to be regarded as legal persons, we take a significant step towards ensuring that our laws remain relevant and effective in an ever-evolving technological landscape.