

Artistic Licensing in the Cultural Industry in the Digital Age - Dilemmas and Opportunities

Fangchao Yang

Tongji University, Shanghai, China

Abstract. Artistic licensing plays a crucial role in driving the development of cultural industries as a catalyst for innovation, sustainability, and economic growth. This study explores the multifaceted role of artistic licensing in the cultural industry, analyzing its far-reaching impact on creative expression, market dynamics, and social engagement. It is worth noting that artistic licensing plays a crucial role in the museum context, providing a legal and compliant basis for museum exhibitions and artifact displays. This partnership helps to promote the dissemination of artifacts and the preservation of cultural heritage, as well as providing the public with a rich cultural experience. This paper first defines art authorization, describes the development of art authorization in recent years, analyses and elaborates on the more successful cases of art authorization in the field of cultural industry, and finally analyses the legal risks faced by art authorization and gives relevant suggestions, to provide some reference bases for the promotion of the healthy and rapid development of art authorization industry.

Keywords: Art Authorization; Cultural Industry; Digital Economy; Copyright Of Artwork.

1. Definition of the Concept of Art Licensing

Art Licensing is the act by which an artist, copyright holder, or agent grants another person the right to use their work for a specific purpose. Such a license, usually in the form of a written contract, permits others to use, reproduce, display, distribute, or otherwise exploit the work of art to a specific extent.[1]

The content and scope of an artistic license can vary depending on the agreement reached between the parties. They may range from the right to display, reproduce, distribute, perform, and use digitally (in the digital age, artistic licenses may also involve online display, use on digital platforms, or other digital forms of exploitation). The intellectual property rights involved in artistic licensing usually include copyrights and trademarks, occasionally designs or utility models in patents, and trade secrets in operations. Art licensing is, therefore, much more than simply licensing high-resolution images of paintings. It is not a business that can be operated and managed by downloading and collaging graphics. Overall, artistic licensing is a rights-binding mechanism with a wide range of scope and standardized agreement terms. Its purpose is to protect the rights and interests of the artist or copyright holder while extending the size of dissemination and use of the work. Such licensing relationships usually require both parties to reach an agreement and follow a legal framework to ensure legality and the protection of rights.

Artistic licensing can empower industries in countless ways. The Global Licensing Market Report 2018, for example, lists the goods/services/industries covered by artistic licensing as follows: fashion accessories, apparel, footwear, electronic products, food and beverage, health and beauty, home decoration, household products, baby products, paper products, publishing, sports, toys, gifts, promotion and marketing, games, automotive parts, and so on. Among them, fashion accessories, skills, and home decoration accounted for the highest proportion, at 17.3%, 15.2%, and 13.2%, respectively. [2]

Depending on the source of provenance of the rights, art licensing can be divided into artist art licensing and museum art licensing. Professional organizations operate art licensing if the artist is sufficiently famous and commercially viable, such as Kaws and Keith Haring in the US, Frida Kahlo in Mexico, Takashi Murakami in Japan, or Wu Guanzhong in China. In contrast, museum art licensing refers to the legal authorization of a museum or cultural institution to display, reproduce, publish, or

otherwise use a work of art or artifact. Such permission usually involves an agreement between the museum and the artist, artwork holder, artwork agent, or other cultural institution, allowing the museum to display, reproduce, publish, or otherwise use the work. At the same time, the core driving force is the museum's visibility and branding, which is used to enhance the number of artworks in the museum's art collection and the innovation of the art collection through art authorization.

2. Development Status of Art Licensing

The development status of art licensing has shown a trend of diversification and dynamic change in the digital era, and art licensing is constantly undergoing innovation under the drive of technology. The industry permeability of art licensing has become more assertive, blurring the boundaries of the industry and promoting the increase of cross-border cooperation between art, science and technology, business, and other fields, creating more new types of licensing methods and business models. In the digital era, AI-generated artworks and the application of virtual reality technology continue to promote the innovation of art content and bring new licensing challenges and opportunities.

2.1 Fashion Industry: Cross-border Integration of Luxury + Art

With the wealth accumulation and aesthetic advancement of the Chinese public over the past 30 years, China has grown to be one of the top three art markets in the world and had jumped to the top of the world and accounted for 30% of the total global art sales in 2011. Since then, it has steadily ranked second and third in the world. According to the 2019 Art Basel and UBS Global Art Market Report, China was listed as the third and accounted for 19 percent of total global sales of \$67.4 billion in 2018. In addition to art, China is also a strong performer in the luxury market and is considered one of the highest-growth markets in the world. Gorgeous Think Tank released the "Luxury Brands and Chinese Artists Crossover Cooperation Research Report" in 2022, cumulatively tracking 140+ cases of luxury brands' cooperation with 100+ Chinese artists. In this report, we reinterpreted the co-branding cooperation between artists and luxury brands through comprehensive observation and in-depth study of the interaction details between luxury brands and artists. This can also be understood as a large-scale art licensing analysis report. This report can also be interpreted as a large-scale analysis of artistic licensing, which helps us better understand luxury brands' marketing strategies and inspires more people to think about the unique value of "artistic licensing" in brand building.

The background and demand for art licensing in the luxury jewelry industry often varies from brand to brand and can be analyzed from two aspects: firstly, luxury brands hope to use the fame and influence of artists to enhance their brand image, and art licensing can help brands increase the scarcity of their products through exclusive co-branding and stimulate the collection mentality of consumers. At the same time, the artistic authorization of luxury goods and artists can also bring about a cross-sector "fan economy." In today's market environment, the brand empowerment of fashion in the marriage of commerce and art is no longer the central paradigm of development, and the change it brings is to deliberately divest the brand of its association with business in front of the public. In particular, the public is more willing to connect with luxury brands when the name of the group behind them is no longer just reflected in the numerical level of financial results but is associated with culture and art and is not just synonymous with commodities that are marked up in high-end shopping malls. For example, in early 2023, the Louis Vuitton x Yayoi Kusama collaborative collection continued Louis Vuitton's mastery of craftsmanship with Yayoi Kusama's signature polka dot art. In this case, Yayoi Kusama, a renowned artist, has authorized the Louis Vuitton brand to use her artwork or elements for creative fusion in its products and designs. Through this artistic license, Louis Vuitton can draw on Yayoi Kusama's unique artistic style and symbols to infuse its products with a distinctive sense of artistry and design elements. This collaboration is more than just a commercial co-branding; it is a way of honoring and presenting the artist's creativity, integrating artwork into everyday life and fashion. This kind of co-branding collaboration also helps to enhance the brand's image and appeal, attracting a consumer base interested in art. At the same

time, for Yayoi Kusama, it is an opportunity to reach a wider audience with her art, making her work more popular and recognized. Art licensing goes beyond commercial cooperation. It is an exchange and fusion between brands and art, enabling artworks to be displayed and disseminated in various fields.[3]



Figure 1. Actual view of Champs Elysées in Paris

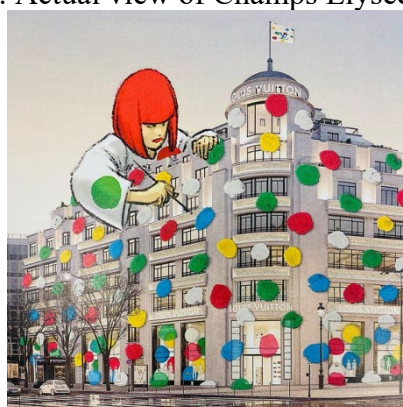


Figure 2. Sketch of LV co-branding design

On the other hand, artistic licensing by luxury brands can be understood as a creative strategy - "artification." Italian luxury brand Salvatore Ferragamo invited Chinese artists Sun Yuan and Peng Yu to create a print featuring the tiger in the Chinese Zodiac, which is used in the classic accessories of the 2022 Chinese New Year collection in tribute to the brand's historical solid connection with culture and art. Since its inception, Ferragamo has been committed to collaborating with artists from different disciplines to seek inspiration and breakthroughs. For this artistic license, the artist was inspired by traditional Chinese paintings, and the print is based on the tiger, a symbol of passion, bravery, good fortune, and peace in Chinese culture. The tiger plays with cranes, eagles, deer, and monkeys amongst the grass and flowers of a Chinese garden, creating a delightful, vibrant new atmosphere and re-enriching consumer perception of the brand.



Figure 3. Salvatore Ferragamo's art licensing work

Art licensing is also a paradigm shift from product to consumer-centered in developing luxury brands. Through art licensing, brands can draw closer to consumers, establish new product content, create "cultural capital" of luxury goods, and, at the same time, satisfy the consumers' demand for artistic and emotional values.

2.2 The Museum Industry: Enabling Artistic Creation Development and Innovation

Art licensing is enabling museums to appear in front of the public in a new way, reshaping the relationship between museum cultural creations and tourists, and in the process, consumers are likewise gaining a different experience. The 2018 Tmall Museum Cultural Creation Data Report released by Ali Data shows that nearly 60% of consumers are willing to pay for cultural premiums. The IP authorisation of museums is actively empowering cultural and tourism consumption nowadays, providing new methods and paths for the consumer transformation and upgrading of the cultural industry.

The Metropolitan Museum of Art actively collects and displays representative contemporary artworks through art licensing in cooperation with artists and art institutions. These works cover different cultures, periods and media, demonstrating the development of artistic diversity. At the same time, the Metropolitan Museum of Art has combined with art licensing to launch digital platforms and innovative exhibitions, including displays that work with AI technology. For example, digitally reconstructed ancient artworks are displayed using AIGC technology to provide an immersive art experience. The museums collaborate with art licensing stakeholders to ensure that the works on display are legally authorised, promoting the copyright and creative rights of artists. At the same time, these displays provide artists with more exposure and promotional opportunities. In terms of social media and digital interaction, museums using art-licensed content can promote and increase digital interactive experiences on social media. For example, collaborating with artists to create digital artworks and sharing them with audiences via social media attracts a younger and more digital audience base.

Overall, museums using art licensing can expand their content and increase engagement, while promoting interaction and understanding between artists and audiences. This kind of cooperation can also promote innovation and development of artistic creation under the premise of legal compliance.

3. AIGC triggers the "art licensing" crisis

In 2022-2023, Artificial Intelligence is developing rapidly. Generative Artificial Intelligence (AI) is a type of AI technology that aims to generate new data, images, text or other types of content by learning the patterns, laws and characteristics of data. Such AI systems are capable of not only analysing, identifying and processing existing data, but also creating new data that appears to be real, with a degree of creativity and innovation.

Generative AI relies on a variety of techniques and models, the best known of which is the Generative Adversarial Network (GAN). A GAN consists of two competing neural networks: a generator network and a discriminator network. The generator network tries to generate new data that is similar to real data, while the discriminator network tries to distinguish between the generated data and the real data. Through constant confrontation and training, these two networks improve each other, with the generator generating more realistic and closer to the real data, and the discriminator having a harder time distinguishing between the generated data and the real data.

In addition to GAN, generative AI includes other forms of models and algorithms such as autoencoders, variational autoencoders, etc. These models can be used in a variety of application areas such as image generation, text generation, music generation, video generation, etc., providing new possibilities for artistic creation, content generation, innovative design, etc. The development of generative AI has not only had a profound impact in the field of science and technology, but has also given some impetus to art, creativity and innovation, and at the same time has brought about some ethical and legal challenges, such as the definition of originality and copyright in the field of art, which is the root of the problem of artistic licensing.

Firstly, the development of AIGC has affected the confirmation of rights in the process of artistic licensing, resulting in the inability to clarify the attribution of the copyright of an artistic work. Just as many artists try to use CHATGPT to generate keywords related to the artwork, and at the same

time put these keywords into midjourney, which generates drawings through this kind of associative and material generative AI software, the whole process does not involve direct human participation. The whole process does not involve direct human participation and intervention, but rather the AI is passively trained to imitate the original material fed to it by the developer, and then outputs a work of art that is very similar to the original material, and forms the overall picture through a reasonable combination of the art material. The essence is to train the AI to imitate human works. Although there is currently no relevant law against infringement of AIGC works in China, the fact is that it affects the interests of the original artists, and at the same time disrupts the order of the art market.

On the one hand, this technology may lead to more disputes about copyright and authorisation of art works. Because generative AI can generate works similar to an artist's style, there is a blurring of the boundaries of originality and authorisation. Artists may face more problems to solve, such as how to determine and protect the originality of their works and how to manage licensing issues.

But on the other hand, generative AI can also provide artists with new creative tools and possibilities. Some artists may explore the possibility of integrating AI technology into their creative process to create entirely new works. In this case, artists may choose to authorise AI algorithms to use their own works and styles, thereby opening up new art markets and audiences.

Overall, generative AI presents new challenges and opportunities for art licensing. Artists, brands and the legal community will need to adapt to and address the implications of these emerging technologies in order to protect copyright and licensing interests in original works and to drive innovation in artistic creation based on technological developments. Such technologies may lead to more disputes over copyright and licensing of artistic works. Because generative AI can generate works similar to an artist's style, there is a blurring of the boundaries of originality and authorisation. Artists may face more problems that need to be solved, such as how to determine and protect the originality of their works and how to manage licensing issues. generative AI may also provide artists with new creative tools and possibilities. Some artists may explore the possibility of integrating AI technology into their creative process to create entirely new works. In this case, artists may choose to authorise AI algorithms to use their own works and styles, thereby opening up new art markets and audience segments. Such changes also provide artists with more diverse creative ideas and activate the development of the cultural industry.

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4. Future Development Path of Artistic Licensing in the Digital Age

4.1 Legal Level: Improving the Legal and Policy Framework

In light of AIGC's content production methods, formulate or update the legal framework to adapt to the needs of artistic licensing in the digital era, including copyright protection for digital content, AI-generated works, and other new media. At the same time, it promotes international cooperation and standardization to establish broader and more precise standards for artistic licensing and draw on successful global experiences to promote IP protection on a worldwide scale.

Art empowers the industry, and it has to be done with the help of the law and throughout the process of creating, confirming, authorizing, using, and defending the rights of art. First of all, the creation of righteousness is the source of requests for authorization, whether it is from the artist's copyright or based on the secondary development of new copyrights after authorization, the adoption of trademarks of artists, museum foundations, or co-branded trademarks or newly designed trademarks, etc., all of them need to be rigorously controlled and risky. One of the most common risks is unclear ownership, such as unclearly agreed upon creative rights/intellectual property contributions, works of office without a labor relationship, generalized co-development, secondary

creation, commissioned creation, etc. [4] Secondly, the confirmation of rights is a prerequisite for the safe conduct of the authorization, which natural and effective supporting documents must support. It is recommended that the cooperation and payment should be based on the satisfactory results of an independent investigation. The details of the authorization should be determined according to the scope of the authorization, the term of the authorization, the type of goods, the limitations of the rights, and the duration of the copyright protection in each country. Once again, authorization is the most critical aspect of the licensing process and is the key to success. Among them, the license agreement is the most important. You need to fully control the risks of the terms and conditions of the deal, such as licensing rights, scope, limitations, nature (exclusive/exclusive, etc.), territoriality, duration and early termination, licensing fees, taxes, responsibilities, rights and benefits of both parties, breach of contract, approvals, audits, quality, insurance, applicable laws, dispute resolution, etc.

4.2 Technical Level: Strengthening the Protection of Works

In artistic licensing, technology needs to be reasonably used to ensure that artists' creative rights and interests are not infringed upon. For example, digital watermarking technology embeds author or copyright information into digital works to identify and protect the rights and interests of the original author. At the same time, the establishment of metadata standards is promoted: a unified metadata standard is formulated so that the source and copyright information of digital content can be identified and tracked to safeguard the rights and interests of creators.

4.3 Agreement Level: Regulating the Rights and Interests of Diverse Subjects

The process of art licensing involves diversified subjects, which may include artists, museums, enterprises, individuals, and so on. Therefore, it is necessary to clarify the terms of the contract in this process, formulate a transparent and fair creation contract and authorization agreement, and clarify issues such as the way of using the work, copyright ownership, and distribution of economic benefits to protect the rights and interests of artists. At the same time, it promotes establishing an artwork authorization platform to provide artists and authorizers with a transparent and efficient authorization and trading platform and to ensure that copyrights are legally compliant.

4.4 Education Level: Improvement of Educational Awareness

Education, in a sustainable way, can fundamentally solve the risks and problems that may exist in art authorization in the long run. Therefore, there is a need to strengthen the education and popularisation of intellectual property rights of artworks so that more people can understand the importance of intellectual property rights and know how to protect the rights and interests of their works. Raise the awareness of art practitioners, consumers, and the public of the laws and ethics of art licensing, and advocate respect for intellectual property rights and originality.

4.5 Social Level: Achieving Social Consensus and Industry Self-Regulation

Art industry organizations and associations can formulate industry guidelines and self-regulatory norms to guide practitioners in complying with art licensing regulations and maintaining industry order. Advocate social respect and protection of artistic licensing, encourage artists to create based on legal compliance, and jointly support the benign development of the cultural industry.

5. Conclusion

Art authorization in the cultural industry faces dilemmas and opportunities in the digital era. It is a complex and severe challenge and a field of innovation and prospects. From the discussion, we learned that exploring the dilemmas and opportunities of art licensing is crucial for the healthy development of the cultural industry.

Among the dilemmas faced, we see the blurring of intellectual property rights and the difficulty of tracing infringement. The popularity of digital media has brought about easy dissemination and

reproduction of works, making infringement more common and challenging to regulate. In addition, the lagging legal and regulatory system also makes it challenging to protect artists' rights and interests fully, and the licensing process is complicated and prone to ambiguity and disputes.

However, significant opportunities lie within these difficulties. The digital era offers more possibilities for art authorization. Digital watermarking, blockchain, and other technical means provide new options for the traceability and protection of artworks, making approval more transparent and traceable. At the same time, the digital medium also provides a broader platform for artists and brands to display and promote their works of art, making them accessible and understandable to more people and facilitating the connection between art and its audience. The paper's discussion revealed the importance of education and awareness-raising. Raising public awareness of intellectual property rights and originality, strengthening the popularisation of laws and regulations, and a correct perception of artistic licensing can fundamentally promote the development and compliance of the art industry.

Therefore, in this era of challenges and opportunities, we need the joint efforts of the whole society. The government, enterprises, academics, and artists must join hands to establish an art licensing system that adapts to the digital era, protects creators' rights and interests, and promotes healthy development in the art industry. Only by finding opportunities in difficult situations and making full use of new technologies and new thinking can we create a more dynamic and sustainable cultural industry ecology together.

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