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Analysis on the Protection of Short Video Copyright and Countermeasures for Short Video Copyright Protection

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Abstract

Short video is born with the development and operation of the Internet environment and has become one of the most popular entertainment consumer products. However, while the short video industry is booming, it also faces the problem of copyright infringement. The reason is that the creation, secondary creation and dissemination of short videos are simple and the cost of infringement is low, so the frequent infringement cases hinder the development of short video market which discourage the enthusiasm of video creators. Alleviating copyright infringement will help copyright protection agencies and relevant laws and regulations improve. Therefore, this paper studies the current short video industry, the current typical infringement phenomenon was described. To be specific, it describes in detail the problems existing in the current governance of copyright in the field of short video. The definition and ownership of short video copyright is not clear, the short video content supervision system is not perfect, and the responsibilities of short video platforms are still to be solved. In view of the outstanding problems, the paper proposed the countermeasures to complete the definition and attribution of short video, establish a sound supervision system, and improve the responsibility of short video platform.

Keywords

Short video, Copyright management, Countermeasures

1. Introduction

Affected by the third information technology revolution, network information technology has continued to develop, which has facilitated information exchange, and short videos have been born. In the current era of high-speed Internet operation, the short video industry is developing rapidly. Due to the characteristics of short video length, low production threshold and wide audience range, ordinary people can create short videos to export their creativity and ideas, opening up the era of national “short

video”. Along with the development of the Internet itself, the current network information spreads extremely fast. Once the work is published, it may attract attention and may be republished without the consent of the video creator, causing losses to the video creator. The continuous emergence of copyright infringement problems in short videos has challenged the copyright protection of Chinese works and gradually become an urgent need for research to be followed up in the field of short videos. Based on this, this paper describes the existing typical infringement phenomena, studies the dilemmas faced by the current short video copyright protection, and proposes specific paths to alleviate them.

2. Analysis of the Need for Short Video Copyright Protection

2.1 The Definition of Short Video

Compared with ordinary videos, short videos are shorter in length, because they are easy to spread and gradually win the favor of consumers. In terms of various types of short videos on various platforms and summary of various types of reports, the author believes that short video is defined as a new type of video media with strong interactivity within a few minutes, which can be watched in mobile state and played on various new media platforms. In terms of various platforms and various types of short videos and reports, the author believes that short video should be defined as a new type of video media with strong interactivity, which can be watched in mobile state and played on various new media platforms within a few minutes.

Short video has three main characteristics: short content, low threshold of creation and strong interactivity. First of all, the most obvious feature of short video is that compared with the previous long video, the length and content of short video can be described as short and concise. Secondly, at present, the creation threshold of short videos is low. Anyone can become a short video creator as long as they apply for an account on a video creation platform and own a mobile phone. Finally, the interactivity of short videos is extremely strong. Various video publishing platforms are set up with features such as likes, comments, reposts and real-time pop-ups and other functions. These functions can stimulate the enthusiasm of video viewers, who can also output their own views to interact with the author, or interact with others who share the comments, forming a unique communication atmosphere.

2.2 The Frequent Occurrence of Short Video Infringement Cases Hinders Market Development

There have been frequent cases of short video infringement on the Internet in recent years. For instance, on August 30, 2018, a dispute over infringement of the right of information network dissemination of works between Beijing Mifujia Media Technology Co. and Guangzhou Interactive Information Network Co. For another instance, Ai QiYi sued Today’s Headlines for 30 million: unauthorized broadcast of “Yanxi Raiders” without permission on September 3, 2018. From the above examples, we can clearly see that in the short video industry, various infringement behaviors emerge one after another, which is very unfair to other short video creators and discourages their enthusiasm. The continuous occurrence of short video copyright infringement cases has broken the normal order of the overall environment of the copyright market and hindered the development of the whole industry. Moreover,

the infringement phenomenon we see now must be a drop in the bucket in reality.

Under the current social background, the regulations concerning the protection for copyright of short video is incomplete, and the industry norms of short video field have not yet caught up with the pace of development of The Times. There is no clear legal system for short video copyright protection, and obviously lack of special institutions for corresponding protection. Therefore, it is very necessary to improve the governance of short video copyright issues and further check the network environment, which is conducive to further promote the development of our short video industry. If the government can regulate the Internet industry legally, introduce legal provisions to strengthen the supervision of relevant institutions, and improve the short video application market incentives, can effectively prevent the occurrence of short video infringement.

2.3 The Relevant Regulations of Short Video Copyright Protection are Imperfect

With the increasing optimization of network technology and the rapid development of the short-form video industry, Chinese society pays great attention to the copyright protection of short video and its development. However, in terms of the current status of copyright protection for short videos, the copyright protection legislation is not perfect, and more specifically, there is a lack of practical supervision and law enforcement agencies. This is also one of the reasons for the frequent infringement in the current network environment. Due to the lack of specific legal provisions, it often ends up with the removal of links to infringing short videos, and the actual infringers are hardly punished. Therefore, it is of great significance to research on the copyright protection of short video, which can punish the infringement as much as possible.

3. Logical Expansion of Copyrights of Short Videos

3.1 Originality Standard under Chinese Copyright System

“Originality” is the core characteristic of “work” in the Copyright Law in China. Originality refers to the independent creation of a work by the author. The object of copyright protection needs to be original in China. To judge whether a short video constitutes an object protected by copyright, it is necessary to start from whether it has originality. The United States has a relatively low threshold for the creation of works. As long as the creativity contained in a work reaches the minimum level, it can be protected by the copyright law. Because of the emergence of the *Fiest* case, the U.S. has determined the “minimum creativity standard”, but the creator also needs to reach the minimum level of creativity. Copyright Law in China as a whole is closer to the civil law system, and the standard of originality includes “independence” and “creation”. “Independence” means that the work needs to be completed independently by the creator, who cannot copy, transport or copy the fruits of his labor. What is more important is that the process of the creator’s output is independent and autonomous, emphasizing the work that goes through an independent thinking process and then directly produced. The term “Creativity” refers to the intellectual creativity of the output work, which reflects the intellectual judgment, values and uniqueness of the author. However, the judgment of the uniqueness of the work is

relatively subjective, which also leads to a certain difficulty in judicial practice, and the copyright identification of the work is difficult to determine.

3.2 Analysis of the Originality of Short Videos

Copyright protection does not cover ideas, but simply protects the expression of ideas. The original judgment of the short video needs to comply with the provisions of Copyright Law in China, and the copyright of the short video is protected by law. However, it should not be confined to the provisions alone, but needs to be considered in the context of the society and the salient features of the industry it is in. The standard for identifying the originality of short video should be neither too high nor too low. High standards will discourage short video creators and reduce video output. However, if the standard is too low, the scope of protection will be too broad, affecting the creation and dissemination of video works.

4. Multi-orientation of Typical Infringement in Short Video Field

4.1 Unauthorized Dissemination of Film and Television Content

The interception of part of the content of longer film and television works, editing and inserting into the content of their own short video works is currently a more typical phenomenon of short video infringement. The infringer usually clips the film and television works with a key word as the core. Through a series of short videos, the infringer can roughly understand the complete content of the film and television drama. A typical case is the dispute between Beijing iQiyi Technology Co LTD and Beijing ByteDance Technology Co LTD. The Beijing-based iQiyi claimed that Toutiao violated its legal rights by spreading a large number of clips of popular films and TV shows through short videos without its permission. Iqiyi believes that its exclusive right of online transmission of the stolen film and television works has been violated, and Toutiao, which is owned by ByteDance Technology Co., LTD., has broadcast the works without permission and obtained actual dividends, attracting the attention of consumers and getting high playback volume. This phenomenon obviously disrupts the normal broadcast of iQiyi. Infringed on the original home network communication right. As can be seen from this, unauthorized dissemination of the content of film and television works in the form of short video, live broadcast and other forms without permission is a prominent infringement in today's society.

4.2 Unauthorized Secondary Creation

Up to now, many short videos can be seen on various video creation platforms in the form of secondary creation of existing film and television works. On Bilibili, creators have attracted a large number of fans by summarizing the plots of existing popular TV shows or movies, reworking them and adding their own witty commentary or unique clips. As it relates to the original work, there must be a concern about whether the original work has the right to adapt. If the short video creator wants to operate on the secondary creation of the original work, it will involve obtaining the right of adaptation granted by the original author. Some creators believe that their actions do not realize that they have reached the height

of infringement, because the original works involved are relatively small compared with the complete video. In addition, they claimed they focused on the secondary creation, which was not intended to spread the original work and was not for commercial use, but only to output my own value views by making short video explanations. However, in March 2018, the State Administration of Radio and Television issued a Notice on Further standardizing the Communication Order of Online Audiovisual Programs, which stipulated that “no unauthorized re-editing, re-dubbing or re-subtitling of classic literary works, radio, film and television programs, or original network audiovisual programs, and no interception of several program segments to be spliced into new programs for broadcast”. This provision provides the basis for the infringement of secondary creation.

4.3 Cross-Platform Carrying of Short Video

Due to the various video distribution platforms that exist on the Internet today, video sharing is very convenient. By changing the title of the video, deleting some clips, or changing some parameters and then transferring the video to other platforms, it can become infringer own work. It is so simple to operate that this behavior is one of the typical infringement phenomena of short video. In practice, infringement cases in this way are common. For example, the infringer of the short video “5.12, I want to say to You” carried out unauthorized transfer without the authorization of the original author and the original platform, and even provided online playback and download services. With the exception of fair use as provided by law, any communication without the consent of the owner of the right of the work shall be deemed as infringement. This act clearly caused infringement, which led the plaintiff to demand compensation from the defendant and to issue an apology on the relevant website.

4.4 Plagiarism by “Article Laundering”

The term “article laundering” borrowed the semantics of “money laundering”, that is, the behavior of legalizing the illegitimate income by disguising, concealing, etc. The most important way of spreading short videos is on short video platforms. Scholars have used one word to summarize the copyright infringement and bad reputation: greedy. As the value of short video is gradually discovered, there are some criminals who want to take a shortcut. Driven by interests, there are some criminals who “edit” other people’s short video works to make their own works. In particular, some marketing media numbers with insufficient original strength have no ability to produce original works. They tamper with, cut or spliced all the popular original content at that time into their own “works”, whose essence is plagiarism of others’ original works. It is precisely because this kind of infringement is easy to operate, so the current infringement is very much. Especially in the field of short video creation, because of its own characteristics, a work can be “laundered” in a short time. According to Article 52 of the Copyright Law of the People’s Republic of China, the act of “manuscript washing” is obviously the distortion and tampering of others’ works, which has the obvious nature of infringement.

5. Difficulties Faced by Short Video Copyright Protection

5.1 Unclear Definition and Ownership of Short Video Copyright

Whether a short video is original or not is the key to copyright. In China, the concept of originality is relatively flexible and highly elastic, and because of the outstanding characteristics of short video works, whether it is original or not needs to be considered from the time, creative techniques and production materials. In judicial practice, the originality of defining short video is hindered by many complicated factors.

In addition to judging whether short video has copyright, it is also a big problem to define the ownership of short video copyright. On November 11, 2020, the 23rd Meeting of the Standing Committee of the 13th National People's Congress voted to adopt the Decision on Amending the Copyright Law of the People's Republic of China, which will come into force on June 1, 2021. The revision revises the definition of a work in the Copyright Law and changes "a film work and a work created by a method similar to the filming of a film" to "an audiovisual work", which is of great significance to the creation of short videos and the protection of short video copyright. Article 2 of the Copyright Law in China also clearly stipulates the ownership of copyright: works of Chinese citizens, legal persons or unincorporated organizations, whether published or not, shall enjoy copyright in accordance with this Law. After the steady development of the short video field, there are a lot of hidden plagiarism in this field. There has been an obvious increase in infringement disputes due to unclear ownership of copyright. Although copyright law regulates literary "work", it is still difficult to control the occurrence of infringement disputes. The reason for this type of dispute is that many people may be involved in the process of a short video from having an idea to shooting and producing, and then to producing the work. It is a big difficulty to determine who owns the copyright of the short video, the investor or the author of the idea. In a random survey of 120 short video users, it is found that 62.5% of the short videos posted by users are mostly derived from novels, movies and TV series, etc., and 60.71% of the short videos posted by users are from movie and TV series, animation, radio and other content clips, while there are few short videos completely designed by themselves. It can be seen that it is now common to edit existing other types of works to produce short videos directly, which makes it more difficult to judge whether short videos are original contents, and the proportion of original contents and borrowed contents, making it difficult to define the ownership of short video copyright.

Short video authors have a certain awareness of their copyright, and they did take the initiative to add watermark to their videos to declare that they have copyright, or clearly stated that they are not allowed to reprint without authorization from the author or platform. However, infringement occurs frequently and in various ways, which always makes people impossible to guard against. To sum up, for short video copyright issues, most users have a certain awareness to actively protect their legitimate rights and interests, but the definition of attribution in judicial practice is still difficult, technical determination and the improvement of the general environment and other important safeguards still

need to be improved.

5.2 The Supervision System of Short Video Content has not been Perfected

Tort behaviors in the field of short video frequently appear in public view, which not only affects the original author, but also seriously challenges the efficient operation and implementation of Chinese laws. Some scholars believe that if we want to alleviate the current video infringement phenomenon in China, we cannot simply ignore the intervention of the legal system, because the interest-led institutional change and then convergence with administrative regulations, reasonable supervision is the key to the institutionalization of online video copyright. Although some short video platforms have introduced relevant management treaties and consciously carried out rectification and cleaning, the content censorship mechanism of each platform has not been established, and the copyright of online video has not been institutionalized.

On the one hand, the division of regulatory authority of the network short video platform is not clear enough, and various departments often have unclear responsibilities and pass the buck to each other when disputes arise on the short video platform, resulting in a serious lack of supervision of the short video platform and an imperfect regulatory system. According to the Electronic Commerce Law in China, it is known that if the copyright owner sends a notice to the platform operator that there is a suspected infringing short video on the platform, the platform operator shall take such measures as deleting, blocking. The platform operator shall take necessary governance measures such as deletion, blocking, disconnection, termination of transactions and services. Most of the cases are only governed by the original creator's initiative to the platform to prove the infringement of others. On the other hand, the channels for the infringed users to report and complain are single, which cannot give play to the supervision role of the public on the short video platform. The single feedback channel largely leads to the malicious copying and carrying of short video content. At present, China has a relatively perfect supervision mechanism for the normal copyright issues. In Chinese Copyright Law, the copyright protection of text, pictures and long video is relatively perfect, and the habit of various users for such information content has already been formed in specific practice.

Since the development of short video, it has been in a relatively stable state. The supervision of copyright of short video content by Chinese legislation has not been perfected, and the supervision system has gradually improved the awareness of procuratorial supervision of short video. The national Internet and information department, the competent telecommunications department of The State Council, the public security department and other regulatory departments in China specifically supervise the infringement behaviors in short videos. Since April 2018, they have strengthened the rectification of the Internet content field, especially the rectification of the infringing and vulgar content in short videos, but various infringement phenomena are still common.

5.3 Legal Liability Provisions of Short Video Platform are Insufficient

With the rapid development of short video and the rapid rise of various short video platforms, relevant infringement problems have gradually surfaced. According to common sense, if short video platform

operators fail to fulfill their governance obligations, they should bear the infringement liability to copyright owners and compensate them for the losses caused thereby. At present, China promulgated and implemented the “Regulations on the Protection of the Right to Information Network Dissemination”, “Electronic Commerce Law” and “Tort Liability Law”, the contents of which have made corresponding provisions on the copyright protection obligations of the short video platform for original works, namely, the platform should fulfill the “notification” and “deletion” obligations. “Notice, delete” is an important way to solve infringement disputes of Chinese short video, but there are still shortcomings. On the one hand, there are no clear regulations on the relevant implementation rules, such as the time limit of notification, which gives the platform great adjustment and redemption space. To be specific, when short video platform operators face more complex and serious copyright infringement cases, the corresponding detailed governance implementation rules are not clear in the law and lack judicial guidance and basis. On the other hand, the operators of short video platforms are prone to abuse this regulation. In the face of the victims’ infringement appeals, the platforms often avoid other legal responsibilities by claiming that they have fulfilled the deletion obligation. As a result, the legitimate interests of the right holder will be infringed and not truly protected by the platform. Under the current Internet environment, the network platform does not have the obligation to review the information spread on the network in advance, and the regulatory initiative of the infringement is poor. The network platform has sufficient ability to examine its own platform’s infringing acts. According to the Regulations on the Protection of the Right of Information Transmission through Network, the network platform shall take necessary measures to actively prevent or prevent the infringement of the three types of information or behaviors mentioned in the regulations. However, in practice, because the infringement of short video is easy to operate, simple to use and low cost of infringement, network platforms tend to ignore their obligations.

6. Countermeasures for Short Video Copyright Protection

6.1 Complete the Definition and Attribution of Short Videos

A relatively flexible standard is used to determine whether a short video is original. Due to the characteristics of short video itself, the author’s creative space is very limited and the difficulty becomes greater. If the creation of short video is too strict requirements, some works will become not belong to the category of protection. It would be unfair to determine whether each short video is original by a stereotypical standard. It is still necessary to combine the specific case and the corresponding social background to determine, can not copy the trial results of other cases to try the case. Therefore, to judge whether the short video is original, we should not only follow the general standard in the current law, but also combine the situation of specific cases.

Therefore, it is suggested that the originality of short videos should reasonably adopt relatively loose standards, and the copyright can be judged more flexibly according to the existing laws. The threshold for the protection of works should be lowered appropriately, and as long as there are few differences in

the final form of expression that are allowed to be recognized, all are identified as works. To judge who owns the copyright of short video, firstly, relevant regulations can be set up in China's Copyright Law to clarify the specific responsibilities of short video platforms and require them to conduct unified management of copyright ownership. The government can improve this contradiction through the force of law and directly define the ownership of copyright. Secondly, it can also set up a channel for short video copyright registration on the Internet. Nowadays, in order to prevent the occurrence of infringement, it is very necessary to register copyright in time to protect the legitimate rights and interests of the right holder, prevent and stop the infringement. Such a move can clearly see who the copyright owner is, and effectively protect the copyright of short video authors, but also stimulate their enthusiasm for creating short videos.

6.2 Establish a Sound Supervision System

On the one hand, the government should strengthen the supervision of short video content, improve the internal supervision, and strengthen the platform audit. The national Internet and information department, the competent telecommunications department of The State Council, the public security department and other regulatory departments specially strengthen the supervision of short video content. In order to save supervision costs, the majority of short video platforms are audited mainly by electronic code scanning, supplemented by manual review. But as far as the current situation is concerned, the regulatory authorities can issue relevant legal documents to strengthen the strength of manual audit, by professional staff review. However, manual review will inevitably involve some subjectivity, so it is plausible to set up another supervision department to conduct sampling investigation and review of short videos in the process of supervision. Different methods can be used to conduct random inspection and research, so as to improve the review work of short video content.

On the other hand, China's government should strengthen external supervision, improve the reporting mechanism, and establish a multi-party participation in the regulatory system. To improve the management mechanism of short video infringement, it is necessary to focus on rectification of prominent infringement phenomena in the field of short video, so as to prevent more disputes resulting from infringement of the legitimate rights and interests of the right holders. The regulatory authorities can establish an effective public reporting mechanism to supervise the infringement of short video content through the public. It is not sufficient to only establish a regulatory platform with multi-party participation and unified management for the governance and regulation of tort behaviors in the field of short video only relying on the supervision and management of administrative agencies in the Internet category. It also requires multiple governance subjects related to short video industry or even each subject to play a role at the same time.

6.3 Improve the Legal Responsibility of the Short Video Platform

On the one hand, China's government should improve the "notice" and "delete" obligation. First of all, the provisions of the article there are unclear loopholes and deficiencies, so the need to further improve the expression of unclear content. For example, the time limit for notification should specify in this

provision, and the relevant provisions unified. Specifically, the judicial interpretation of the time frame of the notice can be made clear is the provisions. This processing time should not be too long or too short, otherwise it will affect the rights of the right to remedy, or will prevent the platform to review the content of the complaint, affecting its judgment of whether the content of infringement. Secondly, as mentioned above, the short video platform can avoid legal responsibility through this principle, in order to prevent future infringement of the legitimate rights and interests of platform users, so the application of this rule should be improved without delay. When a case is heard, it should first determine whether the infringement facts are obvious enough to be recognized by the platform. Therefore, the platform cannot use the “notice” and “delete” obligation defense excuse to avoid its responsibility. Only when this rule is perfected can it play its role to regulate illegal acts in the network and truly protect the legitimate rights and interests of the right holders.

On the other hand, China’s government should also clarify the duty of care for short video platforms. The platform may pose a threat to the legitimate rights and interests of creators, and the platform also has the obligation to provide the corresponding duty of care in response to this threat. Specifically, regulators should clarify through specific documents or legal provisions that short-form video platforms should do the following obligations from different perspectives: First, the obligation of prior notice to users. For users who want to access the platform, they need to be clearly informed of the legal requirements and regulations on the front page of the website or in the user agreement before they register. Moreover, they should also be reminded to consciously protect the copyright of their works and the remedies available to them in case of infringement. It is inexpensive and feasible to comply with this obligation by reminding users clearly before they register. Second, the duty of care for infringing contents. Platform operators need to be alert to short video works involving popular film and television works and other works with high visibility in online distribution. They should review the content of sensitive works beforehand to avoid copyright disputes , as well as focus on some covert editing, plagiarism, handling of infringement behavior, the initiative to screen the work whether the nature of infringement. This requires the platform to increase the financial investment in this aspect of reviewing short video content, and the cost of supervision will increase. Finally, there is also an obligation to actively cooperate with other platforms. In the above-mentioned infringement phenomenon, the cross-platform handling of short videos is simple and not easy to be found. Therefore, each short video operating platform needs to actively collaborate to jointly review the short video content in the platform, observe whether there is cross-platform handling, and more efficiently review the infringing content spread in the network. The above suggestions will involve an increase in regulatory costs, but still within a reasonable range and high feasibility.

7. Conclusion

Short video is a new communication media developed in recent years. With the rapid development of the Internet era and the continuous popularity of intelligent mobile terminals, the short video industry is

booming. Short videos can satisfy the personalized expression of creators, and are highly interactive and entertaining, attracting a wide audience. However, at the same time of rapid development, there are still some problem. Because the copyright infringement of short video creators in the short video industry is relatively simple, the platform supervision is not perfect, and there is no good legal regulation means for the infringement of short video copyright, various copyright legal problems become prominent. This paper from the short video copyright protection of the definition of short video, short video copyright ability, the current short video infringement phenomenon, short video copyright protection facing the dilemma and improvement measures, for each problem put forward improvement measures. Copyright awareness is the basis of shaping a good development environment. Short video creators need to have a strong copyright awareness and use legal weapons to defend their rights after their legitimate rights and interests are infringed. Nowadays, various new entertainment methods and entertainment platforms emerge in an endless stream, and the legal perfection and regulation of short video copyright is only a small part of copyright protection. We have a long and arduous task to continue to improve our copyright system and supervision and protect the rights of creators.

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