

## *Original Paper*

# On Forms of Infringement and Protection of Short Video Advertising

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Received: July 22, 2022

Accepted: August 27, 2022

Online Published: August 31, 2022

doi:10.22158/ape.v5n3p141

URL: <http://dx.doi.org/10.22158/ape.v5n3p141>

### **Abstract**

*Short video advertising is a type of short video that can generate direct commercial benefits. Short video advertising wins out in terms of content, and its broadcast volume grows rapidly. Especially with the development of Internet economy, with well-known short video bloggers using platforms to sell products, advertisements are gradually the same as short videos and appear more and more on short video platforms. Short video advertising itself has the characteristics of marketing, coupled with the characteristics of its length, fast transmission, in the era of Internet fragmentation is widely used as a way of entertainment for the masses, a variety of resulting copyright issues will also trigger wider attention from all walks of life. This paper uses inductive analysis to analyze the marketing strategy and infringement risk of short video advertising, and makes clear the copyright protection system of short video advertising, and promote the healthy and orderly development of short video advertising industry.*

### **Keywords**

*Short video advertising, Infringement of advertising, platform*

### **1. Introduction**

According to a recent Insider Intelligence research forecast for TikTok, its full-year advertising revenue is likely to triple to \$11 billion in 2022, which would make it bigger than its two biggest competitors, Twitter and Snapchat, combined. Since 2018, TikTok has experienced a huge growth spurt in user size, which has generated huge revenue for the company.

As the short video platform of ByteDance, TikTok enjoys a high reputation among the video content consumption and creation platforms worldwide. Thanks to its oversea strategy, TikTok defeated Lasso and Zynn, the short video products of Facebook and Kuaishou, and set off a wave of short video in the United States and even the world. TikTok continues to grow rapidly around the world, with more than

500 million daily and 1.2 billion monthly active users in 150 countries and 75 languages. TikTok's rapid growth has benefited from the revenue generated by short video ads, but short video ads have also raised a number of legal issues that need to be resolved before ByteDance can become more commercially viable. In terms of academic thought, this paper combines the academic thought of law discipline, information management discipline and software and other disciplines. The research on copyright protection of short video advertising is not limited to law. It is inevitable that there is limitations in short video advertising only from the legal point of view, and it should be treated with the academic thought of information management discipline and software.

## **2. A Discussion of the Form of Infringement of Short Video Advertising and the Problem of Protection**

Short video ads are taking advantage of Internet technology to become popular around the world, copyright law is needed to interpret new technologies. (Denis de Freitas, 1983, p. 438) Compared with long videos, advertisements in the form of short videos occupy most people's lives in a way of recreation and entertainment. Its marketing model fills the gap with traditional video advertising marketing and reshapes the commercial pattern of the Internet. With the rapid development of short video advertising, there are many infringements of short video advertising in reality, and bookstores also tended to consolidate. (Michael, 2008, p. 499) Which have caused serious damage to the legitimate rights and interests of short video users and are not conducive to the healthy development of short video industry.

The underlying concern of copyright is with communication. At present, the research on short video advertising is mainly based on three perspectives: communication, economic management and law. Is different from the propagation perspective aims to provide theoretical basis for practice in the spread, it is also different from economics Angle to rely on short video advertising as a business promotion tool to obtain economic benefits, Angle of law aims at in the framework of the current laws and regulations, combined with short video advertising in the judicial practice, puts forward the legal protection of short video advertising. Copyright law has not disappeared with the evolution of technology and the development of a globalized IPR regime is recommended. (Siriginidi, 2003, p. 264)

At present, based on the combination of communication, management, copyright law and advertising law, scholars have not systematically put forward the forms of infringement of short video advertisements and their legal protection measures. In practice, the frequent infringement of short video advertisements also endangers the healthy development of the short video industry. As product piracy has become more pervasive the international pressures to prevent this trend have intensified. The purpose of copyright is "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries". (George, 2013, p. 566) Therefore, the analysis of infringement forms of short video advertisements and the suggestion of legal protection are conducive to promoting the healthy and stable operation of short

video industry under the background of the Internet on the track of the rule of law.

### **3. Types of Infringement in Short Video Advertising Practice**

With the explosive development of short video and live streaming industry, the broadcast volume of short video advertisements has always occupied the top spot, and its infringement phenomenon has emerged. Driven by the fan economy, producers of short video advertisements have little awareness of copyright or ignore copyright rules, which leads to increasingly rampant infringement in the short video industry and increasing legal disputes of short video advertisements. (Stuart, 1998, p. 185)

#### *3.1 Second Splicing Video*

In common law and civil law countries, the video originator shall enjoy the right to protect the integrity of his or her video, and the video shall not be distorted or tampered with by others. At present, it has become a normal phenomenon for users of short video platforms to arbitrarily process, edit, create and upload short video advertisements to major short video platforms to obtain traffic. The secondary splicing of short video ads mainly involves the following behaviors: (1) Cut and splice short video ads: Cut the highlights of short video ads to form a new short video AD, or even replace the advertising words or trademarks of previous videos by some technical means. (2) Mixed-cut short video advertising: Based on the promotion of a particular product, clips of several short video advertisements are edited into one video, so as implementation the purpose of the creator to promote a certain product. (3) Dubbing short video advertising: cut out some core content of short video advertising, and dub this part again to achieve the effect of product promotion. The above second Splicing Video creates the original work maliciously, destroys the integrity of the original work, increases the risk of negative evaluation of the original work from the social level, and infringes the copyright of the original author.

#### *3.2 Stealing Others' Ideas*

As a kind of advertisement work, short video advertisement must contain advertisement creativity. Advertising designers creativity refers to the video works on video to express the theme, platform, user, must carry on the promotion of products after a series of analysis, using the works of the creative thinking of results, the results accord with the requirement of advertisers, achieved the purpose of product promotion, attract the attention of the user, can be called the soul of a short video advertising. In other words, advertising creativity only includes abstract and intangible ideas for the promotion of works, which still belong to the category of thought and cannot be perceived by users because it has not been expressed through material carriers such as videos. If the value of advertising creativity is to be realized, it should be reflected in various ways such as shooting videos. Short video ads are works that the creators release through the platform in the form of short videos upon the request of advertisers. Therefore, short video advertising is the result of advertising creativity from subjective to objective.

Due to the particularity of the product, the availability of direct copying of short video advertisements is not high, so most infringers choose to copy other people's ideas or other slang to attract consumers. Database collections of digital texts are inherently problematic in terms of infringement. The birth of

short video advertising generally needs to go through three stages: advertising content planning, advertising content planning execution, and the release of short video advertising works. The process is relatively complex, and each link embodies the intellectual achievements of the right holder, so it is easy to produce infringement in each stage of the formation of short video advertising.

### *3.3 Covert Collection of Information*

There may be geographical limits to what an agency can or cannot do to pursue an IP infringement case, therefore, we should play the role of platform. (Sameer, 2007, p. 148) Each short video platform stores a large amount of user information in the background, forming a relatively complete database. According to the database, short video advertisers can screen the information browsed by users to get user preferences and make precise push. However, this kind of information is mostly collected without users' knowledge, resulting in the violation of users' personal information privacy. There are numerous users on TikTok platform, and their browsing history and shopping history will be stored in the database. Based on this, the background can conduct preference analysis on users, establish various related advertising models, and then continuously push advertisements that may be of interest to users, so as promotion products. Since it is illegal for short video platforms to collect users' personal information, such covert information collection has violated users' right to know.

### *3.4 Forced Push by the Platform*

Short video platforms and all kinds of software have direct push mechanism and are not controlled by users. Forced push involves violation of users' right to know, but it is difficult for users to fight against the platform. When a user registers an initial account on the short video platform, the page will generally pop out the relevant "informed agreement", which requires the user to check. As an informed agreement, it is an important channel for users to understand the platform information, and a channel for enterprises to collect user information. Based on the "principle of informed consent" personal information processing rules, platforms need to sign an agreement with users to clarify the privacy policy before collecting and using user information. In the process of authorization, the simpler the text is formulated, the more thoroughly users understand, and the trust degree of the platform can also be improved. But the informed agreements for most platforms and software are long and complex, often more than 10,000 words long, making it difficult to take the time to read them carefully. After signing the agreement, the platform will push the short video advertisement. Although the word "advertisement" is indicated in some content, the short video advertisement usually has a story, even if the video has the purpose of product marketing, it is easy to induce users to think that they are viewing the video content instead of advertising.

## **4. Countermeasures of Short Video Advertisement Protection**

### *4.1 Legal Departments Work Together to Play the Role of Rule of Law*

Copyright enforcement is a purely private matter within civil law. No government agency has a responsibility to check for potential copyright infringements. (Michael, 2004, p. 110) On the Internet

environment of advertising industry and platform, the purpose of the legislative department to intervene in it is not to restrict the development of short video advertising, but to protect the copyright system to achieve the best interests of all parties. The legislative department needs to improve the copyright protection system to bridge the conflict of interests between the originator and the pirate. At the same time, the legislative branch cooperate with various government departments, from the boot short video industry, promote the healthy development of the network, copyright protection works, to crack down on infringement, such as level, using a forward-looking, strategic legislation technology, in view of the practice of ads defining the difficulties and main body that difficult problem and combined with the characteristics of the Internet industry, formulate relative specific legal rules as far as possible. Many technology companies process vast amounts of data. (Artur, 2018, p. 254) These include online search engines, social networks, software-manufacturing companies, manufacturers of computer and mobile devices and providers of services available on the internet. From the perspective of law enforcement and supervision, relevant departments can also cooperate with Internet advertising agencies to adapt to the characteristics of the digital era and let Internet advertising agencies provide technical support to achieve the best effect of short video advertising protection.

#### *4.2 Users Should Enhance Their Awareness of Privacy Protection*

Innovative thinking and ideas are necessary, together with increased owner-user co-operation, if copyright is to survive. (Charles, 2000, p. 279) Short video platforms violate users' rights by pushing ads to users without their knowledge, or by forcing users to watch for a certain amount of time before turning off the advertising. Because the short video platform collects user information very covertly, and the amount of money directly related to the user's economic interests is small, the consequences caused by the infringement are easy to be ignored by the user. In addition, after the user applies for the rights protection of the concealed collection of information, the processing speed of the platform is relatively slow, and it is difficult to give a fair processing result in a short time. Therefore, the current short video users' awareness of rights protection is still weak. In fact, the improvement of users' awareness of rights protection will also lead to the reduction of infringements. Therefore, users should enhance their awareness of privacy protection, carefully read the informed agreement when registering an account on the platform, and timely protect their rights in case of infringement. At the same time, they should cooperate with the legal department to supervise the quality of short video advertisements, reduce the dissemination of vulgar works of short video advertisements, and maintain the stability of the order of the social platform.

#### *4.3 Clarify the Relevant Legal Liabilities of Short Video Platforms*

As product piracy has become more pervasive the international pressures to prevent this trend have intensified, the legal liability of short video platforms should be clarified. (Gael, 1994, p. 55) As one of many types of network service providers, network short video platform generally includes content service, access service and storage space service. Short video platform plays an indispensable role in short videos with different creation types and release channels, platform service is still the basic service

of short video platform, and has the function of information space storage. Network platforms can be divided into technology platform and content platform based on different perspectives. The platform provided by network technology provides technical support for works, and does not participate in the direct editing or processing of works. The network content platform is the dissemination of the provided works, which can directly or indirectly share the works themselves, and directly process or edit the works. The role played by the network technology platform is the technical supporter, and the role played by the network content platform is the disseminator. Most Internet service providers only exist as ordinary platforms, without the ability to review infringing content in advance, and there is no fault, but they should fulfill their obligation to delete after receiving the notice from the right holder.

The emergence of electronic communications and the Internet is rapidly changing traditional marketing methods. (Michael, 2000, p. 259) The network technology platform only plays an auxiliary role in the dissemination of short video, while the content providing platform of short video advertisement is in a dominant position in the dissemination process. If the short video users participate in the uploading of the short video, they will also become the disseminators of the works. However, in terms of scope and degree, the participation of the users is low, and they can also be called “participants of the short video dissemination”. For short video platforms, their responsibilities are mainly as follows:

(1) The imputation principle of short video platform. Only on the premise of stipulating the legal liability for infringement can the short video platform be subject to the corresponding legal constraints. The first is platform for providing short video content. In the communication process of short video ads, short video platforms play a more like “publisher”, whose job is to make short video ads open and visible to the public on the platform. The liability of publishers in common law countries is strict liability, that is to say, as long as the publishers publish infringing works, they will bear legal liability whether there is any fault or not. Therefore, according to the practice of European and American countries, short video platforms should also bear strict liability. In this case, the platform will take a more active attitude to protect the copyright of short video advertising. The second is short video technical support platform. Under the different choices of various users, the transmission range of the technical support platform is limited to the works selected by users, and there is no processing of the works themselves, which is equivalent to only acting as an intermediary in the whole process. In order to provide better service to users, the use of works by the platform will involve the “transfer” of the platform and the “cache” of the platform. In reality, the network technology platform can only provide very limited monitoring ability, and it is difficult for the technology platform to control the infringement behavior of others, and there is no very close relationship between it and the damage result. At present, the practice of most countries is to relax the responsibility of the technical support platform appropriately. Therefore, it is more appropriate to adopt the principle of presumptive liability for fault in practice.

(2) The duty of care of short video platforms. According to the premise of the “haven” principle, the network service provider has performed the duty of care, and even if it has performed the duty of care,

but the subsequent infringement occurs, the provider will lose the qualification of exemption without taking certain measures. The purpose of setting duty of care is to achieve a balance of interests between the network platform and users, to achieve a good network order, and to encourage all subjects to maintain a certain degree of enthusiasm. However, different network platforms have different requirements for duty of care. The first is platform for providing short video content. When the short video platform screens different content for different users, it uses its own name, and the platform has completed the first round of screening before the content is released. In this case, it will be deemed that the platform has sufficient time and reason to identify the infringing part of the short video, and corresponding measures should be taken to prevent it. According to the business model of the short video platform, its focus is on the provision of content. Therefore, it should undertake the obligation of care at a higher level and actively and fully review the short video content to be uploaded. Current network technology is also constantly improving, content monitoring technology to achieve cost reduction, and has been recognized by the market. The duty of care of all short video communication platforms in the control of copyright infringement should be improved. The second is short video technical support platform. Since the network technical support platform only provides support for transmission and storage technologies and does not directly output content, it should assume a slightly lower duty of care than the platform providing short video content. Although it may increase the burden of proof of the obligee to a certain extent, the obligee also has more protection in terms of rights protection, which is more operable in reality than pursuing responsibility from the producers of infringing videos. However, as short videos have two infringing parties: the platform and the producer, the exemption of one party does not necessarily mean that the other party is also exempt.

#### *4.4 Construct the Protection Method of Short Video Advertisement Industry*

(1) Give play to the role of advertising industry organizations. The advertising industry organization is the product of the mature development of the advertising industry, generally in the relatively developed countries will have this kind of organization. With the help of its developed advertising industry, the United States has set up a special organization to examine the content and substance of advertising works, which will also help solve the copyright problems caused by advertising works. Some countries also have similar specialized organizations. When it comes to copyright infringement of short video ads, professional advertising industry organizations can help solve the problem more efficiently.

The originality of advertising content should be compared among industries. For example, the advertising association is committed to providing various services for advertising practitioners and regulating the advertising industry. With the popularization of the Internet, people are exposed to all kinds of advertisements every day. At present, the service chain of advertising associations in many countries have been covered nationwide and widely recognized by the industry. With the development and expansion of the advertising industry, the scale of advertising industry organizations is also gradually expanding, and increasingly received attention. In the development of short video advertising and the road of legal supervision should constantly improve the management and standards of

advertising organizations, in order to manage more comprehensive.

(2) Clarify the censorship obligations of publishers. The copyright laws of various countries do not provide complete protection for advertisement creativity. In most cases, short video advertisements will cause economic losses based on infringement, mainly because of the copying of the creator, but also because the advertisement publisher does not have the obligation to review. The review obligation of the advertisement publisher refers to the fact that is after received the short video advertisement, the short video platform publishes the work on the platform based on the commercial partnership between the two parties. The censorship obligation belongs to the short video platform. Before publishing the short video, the short video platform, as the publisher, should fulfill the obligation of reviewing the video in advance. With the rapid development of the Internet, the network information has also reached the maximum expansion. As the advertisement publisher and the information network service provider, the short video platform has the obligation to undertake the obligation of reviewing the works to be released. In today's network environment, there is no way to talk about information security. The biggest problem is that the network information publisher has not fulfilled the obligation of review and supervision. Therefore, as the publisher of advertisements, it is very important to review short video advertisements.

From the perspective of the advertising laws of various countries, the relevant behaviors of advertisement publishers are also constrained. For example, the examination obligation and examination method are stipulated, which require advertisement publishers to conduct certain examination on both the "quality" and the "quantity" of the advertising content. It is also necessary to refer to the basis of plagiarism standards and determine whether the content involved in the short video advertisement is infringing by referring to the elements of tort liability. If the short video advertisement is plagiarized due to the reason that the advertisement publisher fails to fulfill the review obligation, thus causing the original author and the advertiser to suffer losses, then the short video platform as the advertisement publisher shall bear the liability for compensation. If the platform party provides evidence to prove that it has fulfilled its review obligations, or for other reasons, the platform party itself is not at fault, in this case, the platform party as an advertisement publisher shall not be liable. As the last procedure for the dissemination of advertising works, advertising works will produce certain publicity effects after the publication, so the platform as the publisher bears very important responsibilities. The platform should assume the responsibility of the master and reduce the infringement of short video advertisements.

(3) Improve the short video advertising works plagiarism identification procedures. In judicial practice, the lack of reference to clear provisions will make it difficult to form a unified and fixed trial process and trial standards, and different courts will produce different results according to different standards when trying cases. To improve the identification level of plagiarism procedure of advertising works can be more standardized in dealing with short video advertising infringement cases. In order to regulate the copyright infringement of short video advertisement, it is an effective measure to construct the short

video advertisement industry protection measures to protect the copyright of short video advertisement.

## 5. Conclusion

In the network era, various intelligent devices and entertainment industries are changing with each passing day. The arrival of the 5 G era has broken the space limitation of short video advertising applications. The emergence of short video ads also provides a new mode for people to shop. Short video ads not only have a high rate of return on investment, but also have a large business space and a variety of interactive forms, which are very suitable for users' current dual needs of entertainment and shopping, thus attracting a large amount of capital to invest in them. However, short video advertising promotes economic growth, it also leads to the legal ambiguity and tension of copyright. As the types of infringement on the copyright of short video ads are very diverse and the ways of infringement are complex, how to protect short video ads is very important in practice. Based on the particularity of short video advertising, the legal departments should play the role of rule of law. Short video advertising users should also enhance their awareness of privacy protection, clarify the legal responsibilities related to short video platforms, and establish protection measures for the advertising industry, so as to promote the short video advertising industry to form an overall positive environment. With the extension of the short video industry chain, its value has been continuously accumulated. Therefore, building a healthy copyright environment in the future will be the top priority for the upgrading and development of the short video advertising industry.

## References

- Denis de Freitas. (1983). Interpretation of copyright law—Looking especially at the situation created by the new technology. *Aslib Proceedings*, 35(11), 431-439. <https://doi.org/10.1108/eb050907>
- Michael, S. (2008). Copyright in the networked world: the technology of enforcement. *Library Hi Tech*, 26(3), 498-504. <https://doi.org/10.1108/07378830810903454>
- Siriginidi, S. R. (2003). Copyright: its implications for electronic information. *Online Information Review*, 27(4), 264-275. <https://doi.org/10.1108/14684520310489050>
- George, J. A. (2013). Copyright in light of ethics. *Reference Services Review*, 41(3), 566-575. <https://doi.org/10.1108/RSR-01-2013-0001>
- Stuart, H. (1998). Issues of intellectual property. *New Library World*, 99(5), 185-190. <https://doi.org/10.1108/03074809810228044>
- Sameer, K., & Jorgen, E. (2007). Adaptive IP strategies in China: a tactical analysis. *Journal of Intellectual Capital*, 8(1), 139-158. <https://doi.org/10.1108/14691930710715105>
- Michael, S. (2004). Copyright in the networked world: technology and consumer rights in copyright. *Library Hi Tech*, 20(3), 110-114. <https://doi.org/10.1108/10650750410551442>
- Artur, S. (2018). Website removal from search engines due to copyright violation. *Aslib Journal of Information Management*, 71(1), 54-71. <https://doi.org/10.1108/AJIM-05-2018-0108>

- Charles, O. (2000). Does copyright have any future on the internet? *Journal of Documentation*, 56(3), 279-298. <https://doi.org/10.1108/EUM0000000007116>
- Gael, M., & Christopher, R. (1994). Product Piracy: The Problem that will not Go Away. *Journal of Product & Brand Management*, 3(4), 55-65. <https://doi.org/10.1108/10610429410073129>
- Michael, T. Z., Theresa, B. F., & James, P. J. (2000). Legal issues associated with international Internet marketing. *International Marketing Review*, 17(3), 253-271. <https://doi.org/10.1108/02651330010331651>