

Research on Copyright Protection of Short Video in the Era of We Media

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Abstract

In the era of We Media, the development of mobile Internet has spawned a variety of short video applications. As a new information media, short video meets the information needs of the public because of its rich content. However, its strong social and interactive characteristics also make the short video infringement prominent. Therefore, based on the demonstration that short video can be copyrighted, this paper deeply explores the dilemma and causes of short video copyright protection in the era of We Media. At present, it is difficult to determine the originality of short video, identify tort and protect rights. In view of these difficulties, this paper makes a legal analysis on the originality of short video, "reasonable use" and the responsibility of short video platform. Finally, it puts forward the perfect path of short video copyright protection in the era of We Media, effectively protect the legitimate rights and interests of short video copyright owners, and promote the virtuous circle development of short video industry.

Keywords

Copyright; We Media; Tort Protection.

1. Introduction

The development of mobile Internet has spawned a variety of application software, including short video applications. In the era of We Media, short video has increasingly become an information media for media release and public sharing because of its strong interaction and large amount of information. Interactive communication through short video breaks through the obstacle of single expression of words and images, so it has become the main channel for public voice. However, because the content released by short video is different from ordinary works, it has fast communication speed, simple production, easy deletion and editing, and repeated violations, which makes its copyright protection more complex.

2. Development Status and Copyrightability of Short Video in the Era of We Media

2.1. Development Status of Short Video

According to the short video industry development report of iResearch consulting, short video is defined as a video form that can be shot, edited and beautified on the network platform based on the mobile terminal within 5 minutes. Short video is different from the traditional video and has distinct characteristics. First of all, short video is short, usually in 1 second to 5 minutes, which can greatly attract the public's attention and kill boring time. Secondly, the production threshold is low and relatively simple [7]. As long as you have a mobile phone connected to the mobile Internet, you can watch videos released by others anytime and anywhere, or make and share your own works. Thirdly, it has social attributes. Through interactive communication with short video publishers, it can be used for learning or entertainment. Finally, the transmission speed is fast and the transmission range is wide. Usually, several short videos can

be viewed and shared through finger sliding, and the maximum amount of information can be obtained in a short time.

Tiktok is developing rapidly in China. The amount of short video users such as jitter, Kwai Fu, Xiao Hong Shu has been broken by 100 million. According to the Research Report on China's online audio-visual development in 2020 released at the 8th China online audio-visual conference, by June 2020, the number of online audio-visual users in China had reached 901 million, and the utilization rate of Internet users was 95.8%. In various segments, the user utilization rate of short video is 87%, and the user scale reaches 818 million. Short video has become the mainstay of the network audio-visual industry [6]. However, there are still some problems in the development of short video, especially the serious content homogenization, which leads to the frequent occurrence of short video copyright infringement.

2.2. Copyrightability of Short Video

The first problem to be solved in the protection of short video is whether it constitutes a work in the sense of China's copyright law and whether it can be included in the protection scope of copyright law. According to China's copyright law, "a work refers to an intellectual achievement that is original in the fields of literature, art and science and can be copied in a tangible form." it can be seen that there are three elements to determine whether it is a work: first, it can meet the requirements of replicability, that is, it can be copied in a tangible form; The second is the specific expression in the field of literature, art and science; Third, meet the requirements of originality. To judge whether a short video constitutes a work, three elements are indispensable. Replicability requires that the author can express the intellectual achievements in his brain through tangible materials, rather than just a creative idea in his brain, which needs to be fixed by tangible material carriers. In the era of we media, the disadvantages of one-way communication have been changed, so that everyone can participate in the production and dissemination of information. The emergence of short video applications also provides a carrier for public communication [1]. As long as you have a mobile phone connected to the mobile Internet, you can watch other people's short videos anytime and anywhere and share your own short videos. Both the disseminator and the disseminatee can record and make them in the short video application. Once users upload their videos to the short video application platform, it is equivalent to copying their personal works in tangible form.

Short videos also belong to the specific expression in the fields of literature, art and science. Most of the short videos, whether advertising creativity or film interpretation, belong to the category of literature and art. They can reflect a certain literary and artistic value, be accepted and disseminated by the majority of users, and play a good role in publicity.

Originality includes two aspects, namely "independent completion" in the identity of creative subject and "creativity" in the physical level of creative achievements. The former means that the work needs to be completed by the author independently and cannot be the product of copying or plagiarizing others' works; The latter refers to a certain creative height, that is to say, it should reflect the author's own thoughts and creativity, the personal personality characteristics are more obvious, and it can not be pure copied information without any content value. If it is carefully produced, short videos that can reflect the author's ideas and creativity should become works.

3. The Dilemma of Short Video Copyright Protection in the Era of We Media

The emergence of short video undoubtedly enriches the entertainment life of the public and becomes a medium for users to participate in discussions. The prevalence of short video also makes the traffic economy grow rapidly. Many users compete to obtain benefits through short

video, and even use infringement means to achieve profit. Due to the difficulty in identifying the originality of short video and the high cost of safeguarding rights, the protection of short video in the era of we media is more complex.

3.1. It is Difficult to Identify the Originality of Short Video

Short video is deeply loved by users because of its simple production process, low production threshold and strong participation. It can be said that it is a "traffic depression" of the Internet in recent two years. However, it is precisely because of its low production threshold that infringement often occurs. The key problem of short video protection is the identification of its originality, which is one of the constituent elements of works. Different types of short videos have different forms of expression, and there are many differences in the identification of their originality.

The difference in originality is because the types of short videos are diverse and the content is easy to homogenize, which can not be recognized uniformly. Short videos are often no longer than ten minutes, but they convey rich content through sound and pictures. Creators can arbitrarily edit text, music, photos and other elements to produce various forms of video content. However, different video contents may have the same ideological expression, but the expression methods are very different, which can reflect the author's unique style, are the author's personalized expression, and reflect a certain originality. With the popularity of short video, video content and forms are diverse, and there may be secondary creation of short video. On the one hand, it may be suspected of the reference and editing of the original work, on the other hand, it is the display of the editor's ideological achievements. It is difficult to determine whether there is originality and whether the short video can constitute a work in the sense of copyright law. Therefore, it is a challenge to identify the nature of different types of short videos.

3.2. It is Difficult to Identify Tort

Due to the simplicity of making short videos, users may edit and upload short videos released by others to other platforms. Whether it is secondary creation needs to be further demonstrated. If the video edited by other users is quite different from the original author's short video, and can reflect the creator's ideological achievements, there is no doubt that it is regarded as secondary creation. For secondary creation works, if infringement events are avoided, the permission of the copyright owner must be obtained. However, in real life, it is common to use other people's works for re creation without permission. The conflict between the openness of information dissemination and the privacy of personal information reduces the difficulty of obtaining other people's works, and it is difficult to define the boundary between reasonable use and infringement [4]. If the work is uploaded to the short video platform, due to the decentralized communication effect of the network, it may spread widely in a short time. At this time, it is more difficult to judge whether it constitutes infringement. The timeliness of short video communication also shows that obtaining the use license has lost its significance, and the identification of infringement of secondary creative works is also quite difficult.

In addition, it is difficult for copyright owners to directly Sue infringing users to achieve the desired effect. When the infringement occurs, the works of the copyright owner have been uploaded to the short video platform, forwarded and shared by a large number of users. At this time, it is difficult for the obligee to investigate the legal liability of infringing users through effective ways. Because it is difficult to lock the specific infringer, the other party can block its network address and can't find the other party's network information at all.

3.3. It is Difficult to Protect Short Video Rights

There are several reasons for the difficulty of safeguarding rights. First, the court trial takes a long time. Generally, the time of first instance and second instance will not exceed half a year, but the time of jurisdiction objection of the court of first instance is much longer than that of

second instance. In 2020, the Shanghai Intellectual Property Court accepted nearly 6000 intellectual property cases, which has great work pressure for the court. In addition, the case is relatively complex, which requires the judge's flexible judgment, and the trial time is relatively long. Defense lawyers will also use jurisdictional objections to strive for settlement time, making copyright owners lazy in safeguarding their rights.

Secondly, it is difficult to identify the burden of proof of rights. The ownership evidence is mainly divided into three categories: the first is the notarial certificate issued by the notary office, the second is the authorization license agreement, and the third is the legal publication. The notarial institution needs the obligee to provide corresponding evidence for the notarial certificate, and the procedure is cumbersome and expensive. The obligee needs to pay a high notarial fee when he has not filed a lawsuit.

Finally, it involves the subject matter and the amount of compensation. Due to the small number of claims, fewer decisions were made in a large number of cases. If the claim cannot be determined to exceed 100000 yuan, the award of compensation cannot exceed 100000 yuan. The reason why the amount of compensation is not high is not only the burden of proof, but also the actual loss of the obligee and the difficulty of proving the license fee. If it cannot be determined, the court will give full play to its subjective initiative. According to the facts of the case, the amount of compensation is often not high.

4. Causes of the Dilemma of Short Video Copyright Protection in the Era of We Media

4.1. Analysis of "Originality" of Short Video Copyright

Different scholars hold different attitudes on how to establish the originality standard of short video. Some scholars believe that short video is also the creative intellectual labor achievement of the short video author, and the expression of the short video author's personality, thought and emotional content. Some scholars believe that short video only needs to meet the minimum standard of originality.

On the issue of establishing and judging the originality standard of short video, the principle of balance of interests should be considered. While protecting the interests of the authors of short video copyright, we also need to take into account the specific situation of the development of short video industry. The judgment of short video originality standard also needs to consider the personal intelligence creation standard. Personal intelligence creation standard mainly includes two levels: the first is personality standard. When considering whether a short video is creative, it is necessary to give priority to judging whether the short video can show the personality of its author; If the short video can reflect the personality of the author of the work, the short video should be recognized as an original work. The second is the criterion of creative choice. In the case of short video works, it can not directly reflect the personality of the author of the work. In this case, we can consider whether the short video works can reflect the author's creative choice and how many creative choices the author makes when creating the short video. In addition, there are some differences in the originality identification of different short video types. For the secondary creation of editing, as long as the work can reflect the creator's thoughts and feelings and reflect a certain theme, it can be regarded as original. If it is simply copied and spliced without any ideological innovation, it can not be protected by copyright.

4.2. Analysis of "Fair Use" of Short Video Copyright

Article 22 of the copyright law stipulates that "for the purpose of introducing or commenting on a work or explaining a problem, properly quoting other people's published works in a work" may not be permitted or paid to the copyright owner. This provision means that the

interpretation video of film and television drama can be used reasonably only if it meets the conditions specified in this article.

"Fair use" is a legal principle that stipulates that in some cases, users can reuse materials protected by copyright law without obtaining the permission of the copyright owner and paying remuneration. For example, a short video can clip small excerpts from works from different sources, creating a new information about other aspects. The use of part of the original work in order to create a work with a new meaning can be considered as reasonable use. However, different countries have different regulations on the acceptability of using materials without the permission of copyright owners. In judicial practice, the court analyzes the potential fair use according to the facts of each case.

4.3. Responsibility of Short Video Platform

The infringement principles involved in the copyright infringement of short video mainly include "direct infringement" and "indirect infringement". Compared with "indirect infringement", short video "direct infringement" is directly prohibited by the copyright law; "Indirect infringement" is an act that provides substantive help and allows or expands the consequences of infringement when it knows or should know that others are about to or are implementing "direct infringement". "Direct infringement" adopts the principle of no-fault imputation, that is, if the infringement is carried out, whether there is fault or not, it should bear tort liability. The subjects of direct infringement include short video platform content providers, short video platform and short video distribution platform. "Indirect infringement" adopts the fault principle, which is generally short video platform, that is, if the short video platform fails to exercise the obligation of "notice delete" in time when it finds the infringement, and there is subjective fault, it constitutes infringement; If the short video platform only provides storage space services for users, there is no subjective fault, that is, it does not belong to infringement. In the era of we media, short video works copy, download and store information without the authorization of the copyright owner or for the purpose of unreasonable use, which constitutes an infringement. For personal use and learning and communication solely for non-profit needs, it does not constitute infringement. Secondly, it is also an infringement of the original works to disseminate the works of others without authorization beyond the scope of reasonable use stipulated by law, or to send digital works without copyright to unspecified objects for some benefit without the right to disseminate the works, as for the division of tort liability, we should effectively measure the importance of seeking benefits. Finally, in the era of short video, based on the characteristics of we media, works are more vulnerable to infringement. Many infringers delete or change works in an improper way, illegally decode copyright technology, illegally copy and download and reprint through short videos, resulting in heavy losses. In addition, the deletion or modification of rights management information may cause a new infringement, which should be recognized as infringement.

5. The Perfect Path of Short Video Copyright Protection in the Era of We Media

5.1. Perfecting the Definition of Short Video Infringement in Copyright Law

The nature of online short video is different from the definition of works stipulated in China's copyright law, resulting in the controversial ownership of the copyright of online short video. The phenomenon of different judgments in the same case in China is quite serious, and the road of safeguarding the rights of the victims is also difficult.

At present, the problems such as the identification of infringement subject and infringement behavior, the original evaluation standard and the responsibility identification of the platform in the development of China's network short video need to be solved urgently. The state should

improve the revision of relevant laws and regulations in a targeted and timely manner in combination with the development structure of China's culture and entertainment industry, and implement the implementation of laws and regulations; At the same time, we should establish and improve the supervision and reporting mechanism, clarify the responsibilities of supervisors, clarify the main body and pursue the responsibility to the end, and improve the cost of illegal activities. Starting with laws, regulations and supervision, we will work together to promote the healthy and orderly development of online short video.

5.2. Short Video Platform Performs Higher Duty of Care

In short video infringement cases, the actors are the producer of short video, the network anchor of short video and the playing platform of short video. In short video copyright infringement cases, the producer is the subject of tort liability. If the platform and the anchor constitute division of labor or there is evidence that the platform knows or should know the infringement of the network anchor, they belong to joint infringement and bear joint and several liability. If the broadcasting platform only applies the "safe haven principle" as a technical service provider, that is, after the infringed sends an effective notice to the platform, the platform deletes or removes the infringing works in time, and fulfills the obligation of "notice deletion", which does not constitute an infringement, it will not bear tort liability.

Before the infringement is found or notified, the short video platform shall take active measures to actively find and deal with the possible or existing infringement. Secondly, for the effective infringement notice that has been received, the short video platform should take timely measures, mainly including fulfilling the deletion obligation and preventing the further expansion of damage results [8]. Finally, the short video platform should continuously monitor the short video subsequently released by the same infringer in order to prevent possible repeated infringement.

The short video platform shall do its reasonable duty of care, take technical measures to identify the short video content, set up keyword query, retrieval and keyword shielding, establish a key monitoring list for popular works and repeated infringing works, and clean up the infringing video content in time.

5.3. Enhance Public Awareness of Copyright Protection

Although the public is the victim of infringement, it is also the perpetrator of infringement. Therefore, preventing and improving the public's awareness of copyright protection from the source is the key link to reduce the occurrence of infringement. At present, China's citizens' awareness of intellectual property rights needs to be strengthened, and the Legal Popularization of intellectual property rights also has a long way to go. All working departments should cooperate with each other and reduce the occurrence of online short video infringement cases from the source from the perspective of victims and perpetrators.

From the perspective of the victims of infringement, we should increase the efforts of grass-roots departments such as communities and trade unions to popularize the law to the public, improve the public's awareness of safeguarding their rights, help and guide the public to participate in the process of safeguarding their rights after infringement, and protect their legitimate rights and interests from infringement; The infringed should also improve their legal literacy and learn to defend their interests with legal weapons.

From the perspective of the perpetrator of infringement, we should improve our awareness of abiding by the law, strengthen our reserve of legal knowledge, abide by the bottom line of the law, and do not take "ignorance of the law" as an excuse. In the era of "everyone is a creator", illegal theft of other people's intellectual property rights is neither desirable nor tolerated. Any act of stealing other people's intellectual achievements for nothing should be prohibited.

6. Conclusion

As a new media form, short video is growing in both quality and quantity, and its commercialization and liquidity have also been significantly improved. However, it is obvious that the network market environment is not fully prepared, resulting in a large number of infringement events and various forms of infringement, which soon became the hardest hit area of infringement in the era of we media. However, due to the different links and channels of infringement, the difficulty index of attack is increasing, and there is no specific legal and regulatory basis, which also makes the efficiency of attack low; The lack of cooperation of the short video publishing platform and the imperfect supervision mechanism have also created many opportunities for infringement, which has seriously hindered the benign development of the industry. Only by standardizing the dissemination and management of network short video, establishing a good order of short video copyright operation, optimizing the function and content layout of short video, improving its quality, providing users with better online experience and promoting its further development, can we achieve the check and balance point between platform interests and public services.

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