

Analysis of the Elements of Civil Liability for Computer Software Copyright Infringement

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Abstract

In the protection of computer software copyright, civil liability is an indispensable part. Like the elements of tort liability in civil law, the elements of civil liability for computer software copyright also include the facts of damage, illegal acts, causality and other elements. There are many forms of infringement of computer software copyright, and the current legal provisions cannot completely describe all kinds of infringement, so there is still a long way to go to study the civil liability of computer software copyright infringement.

Keywords

Computer Software; Copyright; Civil Liability; Tort Liability; Science of Civil Law; Subjective Fault.

1. Introduction

Civil liability is an important part of the civil legal relationship, which refers to the civil legal consequences that the civil subject should bear according to law or the civil legal liabilities that should be borne based on the special provisions of the law due to the implementation of illegal acts in civil activities. Civil liability "is where the vitality of modern civil law lies". The progress and improvement of civil legislation does not focus on stipulating how many people can enjoy civil rights, but on formulating a civil liability system that is as perfect as possible.[1]Article 23and Article 24of the Regulations on the Protection of Computer Software specify the forms of expression of software copyright infringement and the manner of civil liability.The constitutive elements of torts refer to the necessary conditions for the specific acts of the actors to constitute torts and bear corresponding civil liabilities according to the law. The constitutive elements of tort liability occupy an important position in the tort law, which is the specific application of the principle of liability fixation. By using the judgment method of constitutive elements and analyzing the specific acts, we can determine whether a specific damage fact constitutes a tort, that is, whether the actor should bear civil liability.[2]The so-called constitutive elements of civil liability for software copyright infringement refer to the conditions that must be met to constitute civil liability for software copyright infringement under general circumstances. Conforming to the constitutive requirements of civil liability for software copyright infringement is the premise of bearing civil liability. As for the constitutive elements of tort liability, there are mainly "three elements theory" and "four elements theory" in China at present. According to the "three elements theory", the constitutive elements of tort liability include negligence, damage results, and the causal relationship between acts and damage results. This theory holds that the illegal act is not sufficient as a constituent element of tort liability. The "four elements theory" holds that the constitutive elements of tort liability include: the illegality of the act, the damage result, the causal relationship between the damage act and the damage result, and the fault of the actor. [3]For the constitutive elements of civil liability for software copyright infringement, the "four elements theory" is generally adopted.

Specifically, it includes four items: damage facts, illegality of behavior, causality and fault, which are the four elements of civil liability.

2. Existence of Damage Facts

Tort civil liability is mainly a kind of property liability. It mainly punishes the victim by means of property compensation, so as to compensate the victim for the property loss. Since it is to compensate for the damage, of course, there must be the fact of damage. Only when the fact of damage occurs, can the problem of compensation occur. The so-called damage fact refers to the actor's personal or property interests caused by his own behavior and objects under his control. Such negative interests include the negative consequences and conditions suffered by all rights and interests recognized and protected by law. Such as reduction of property, loss of interests, damage to reputation, mental pain or pain, loss of life, damage to the freedom of physical health, etc.

The fact of damage, as one of the elements of civil liability for infringing software copyright, must conform to the following characteristics: First, the damage must have actual damage results, which means that the software copyright owner suffers adverse consequences of personal and property rights and interests due to the harmful acts of others. The second is the certainty of damage, which means that the fact of damage to the rights of software copyright owners is a certain fact, not a hypothetical, fictitious, and yet to occur phenomenon. The third is the remediability of the damage, which means that the damage to the rights of the software copyright owner has occurred and must reach a certain degree, which is legally remediable.

In the case of infringement of computer software copyright by Dongguan Pusaite Testing Equipment Co., Ltd. and Dongguan Shengding Precision Instrument Co. Ltd.[6], on March 7, 2016, the National Copyright Administration of the People's Republic of China issued the Software Copyright Registration Certificate (RZDZ No. 1224264), which stated that the software name was "Video Contact Angle Tester Software [referred to as: Contact Angle Software] v2.4.0", and the copyright was Shengding Company, The completion date of the development was November 1, 2013, and the first publication date was October 1, 2014. The rights were acquired in the original way, and the scope of rights was all rights. In this case, Shengding Company claims that Pursat infringed its right to copy, distribute and sign the software works involved.

From May 15, 2019 to June 4, 2019, the agent of Shengding Company and the personnel of Pursat Company had many conversations about purchasing machinery and equipment through WeChat chat software, and the purchase price was between 21000 yuan and 24480 yuan. On June 17, 2019, Pusaite Company sent a purchase and sales contract to Shengding Company's agent Zhao XX through WeChat, agreeing that the supplier Pusaite Company would provide a water drop angle tester to the demander Zhao XX, with a unit price of 24480 yuan. After the accused product was assembled on site, the computer connected to the water drop angle tester turned on and displayed the accused infringing software installed therein. Running the software application of Shengding Company involved in the case was compared with the application of the accused infringing software. The overall layout, composition ratio, background color, font size, distribution of functional modules, key settings, pull-down menu bar settings, operation methods, and the four algorithms contained in them were consistent, including the administrator password of "shengding", Only the application icon and copyright information are different. The above can prove that the accused infringing software copied the software involved.

According to Article 8 of the Regulations on the Protection of Computer Software, the software copyright owner enjoys the "right of authorship", that is, the right to indicate the identity of the developer and sign his name on the software; "Copy right" means the right to make one or more

copies of the software; The "right of distribution" refers to the right to provide the original or copy of the software to the public by means of sale or donation. Pursat and Shengding are competitors in the same city and industry, and Shengding has a certain degree of popularity in the industry. It produces and publicly sells "video contact angle measuring instrument" loaded with the software involved in the case. Pursat has a great possibility to contact the software involved in the case of Shengding, and the alleged infringing software is substantially similar to the software involved in the case of Shengding. If Pusaite manufactures and sells the "water drop angle tester" loaded with the sued infringing software without permission and does not indicate the name of the software developer, it shall be deemed that Pusaite infringes the right of authorship, reproduction and distribution of the software in question enjoyed by Shengding.

3. Illegality of Injurious Act

The illegality of the injuring act is another component of the civil liability for infringing software copyright. Act in civil law includes both positive action and negative omission. Whether act or omission, they all constitute "acts" in the civil sense. The acts that cause damages in the elements of civil liability for software copyright infringement must be illegal, and only those who do so should be liable for compensation. Otherwise, even if there is the fact of damage, the actor will not be liable for compensation. Generally, there are two forms of illegal acts, namely, the illegal act of act and the illegal act of omission. The so-called illegal act refers to the behavior that the perpetrator does not allow by laws and regulations such as the Regulations on the Protection of Computer Software. The so-called illegal act of omission refers to the act that the law requires the actor to do but the actor does not do. To judge whether the actor has committed an illegal act of omission, the most important thing is to look at two points: first, whether the actor has the obligation to act in law; Second, whether the person with certain obligations had the conditions to perform at that time. Only when the actor is legally obligated and has the conditions for performance but fails to perform, can he be identified as having committed an illegal act of omission.

It should be noted that the understanding of the content of "law" in the illegality of the injuring act includes the provisions in the national substantive law, public order and good customs, and even the obligations that should be undertaken according to the requirements of the post, because its feature is to be objectively consistent with the spirit and basic principles of the law.[4]China's Copyright Law, Regulations on the Protection of Computer Software and other laws and regulations have stipulated the rights enjoyed by computer software copyright owners. Violations of relevant intellectual property laws and regulations against software copyright owners are illegal acts.

How to define the "illegality" of behavior in judicial practice? In one case, Company A produced more than 600 copies of detailed answers to exercise questions in college textbooks, while Company B used 423 copies without permission. Then, does the behavior of Company B constitute obtaining, using and disseminating the manuscript data involved in the case for profit through unfair competition? As a competitor in the same industry, can you identify that its behavior violates Article 2 of the Anti unfair Competition Law and constitutes unfair competition? The following requirements shall be met when applying this article: First, the law does not make special provisions on this kind of unfair competition behavior, that is, this behavior does not belong to any of the specific behaviors listed in the Anti unfair Competition Law; Second, the legitimate rights and interests of other operators are actually damaged by this act, that is, unfair competition acts have a causal relationship with the damage to legitimate rights and interests; Third, the act violates the principle of good faith and recognized business ethics, that is, it is illegitimate or justifiable.

In the above cases, the answers to the exercises in the university textbooks produced by Company A are not original, not works protected by copyright law, and do not have the basis of legal or agreed rights. Therefore, although this kind of behavior of Company B should not be advocated by law, it should not be simply included in the scope of tort, and thus subject to legal sanctions.

4. There is a Causal Relationship between the Illegal Act and the Damage Result

The causality of infringement refers to the causality between the illegal act and the fact of damage, that is, if there is no such illegal act, the damage will not occur, and the act is the cause of the damage result; On the contrary, even if the act does not exist, the damage will occur, then the act is not the cause of the damage. Causality is the basis for the establishment of tort. Whether in the continental law system or the Anglo American law system, causation is regarded as the basic component of tort liability, and is also an important standard to judge the size of liability.[5].

In software copyright infringement disputes, the purpose of determining causation is to judge whether the consequences of damage are caused by the infringer. When determining the causal relationship, we should not only judge whether the causal relationship is established according to the evidence provided by the software copyright owner, but also comprehensively analyze whether the evidence provided by the software copyright owner will inevitably lead to the occurrence of damage. If it is determined that there is a factual causal relationship between the infringer's behavior and the damage suffered by the software copyright owner, the causal relationship between the two is established; If the objective fact is that the infringer's behavior is not the cause of the software copyright owner's loss, there is no causal relationship between the two.

We use a case to illustrate that Company A has independently developed the computer software of "Talent and Beauty Mall Platform System V6.5", but found that there is a WeChat official account named "Talent and Beauty Mall", which conducts propaganda and business activities in the name of e-commerce platform website, seriously infringing the legitimate rights and interests of Company A. Company A has complained to Tencent for many times, but Tencent only banned the content of the WeChat official account of the "Talent and Beauty Mall", but did not delete the infringement information. As the operation manager of the WeChat official account, Tencent still did not act after Company A complained for many times, failing to fulfill its obligation to reasonably solve the infringement problem. Then can it be determined that Tencent provides convenient services for Company B's infringement, which constitutes helping infringement, so as to bear corresponding tort liability? In this case, the claim of "helping others to commit torts" should include: first, helping people to commit acts of help; Second, the aided person has committed an act of infringement, and there is a causal relationship between the act of assistance and the damage caused by the act of infringement; Third, the act of helping is intentional. First of all, it can be determined that Company B infringed Company A's right of authorship. As for whether it constituted an act of infringement of the software copyright involved, Company A did not show relevant evidence, so it cannot be determined that Tencent, which it claims, has committed an act of helping infringement. It only claimed that the right of authorship in the software copyright involved was infringed with the same name in the WeChat official account of the "Talent and Beauty Mall" as the software involved, lacking factual and legal basis.

5. The Actor is Subjectively at Fault

Fault is an important factor in the constitution of tort liability. It is not only the constitutive element of liability, but also the final constitutive element of liability. To be specific, fault is a kind of imputable psychological state that the perpetrator subjectively has intention or negligence for the consequences of his behavior when implementing the act, including intention and negligence. The actor who foresees the consequences of his own act and hopes that it will happen or allows it to come is called intent. An actor who should have foreseen or could have foreseen but did not foresee the outcome of his act, or who though he had foreseen but believed it would not occur, so as to cause damage to the outcome, is called negligence.

In software copyright infringement disputes, the behavior of the actor is intentional or negligent, or the extent of the fault, which generally has no practical significance for determining its civil liability. This is because the determination of the scope of civil liability for infringement of software copyright usually depends on the existence or size of the damage, and is not different because of the intention or negligence of the perpetrator.

The above case of Company A and Tencent also shows that to constitute an infringement of computer software copyright, the subjective fault of the actor must be taken as the premise, which should conform to the principle of fault liability stipulated in the Civil Code. If any of the above four elements is missing, the act cannot be considered as an infringement.

6. Conclusion

The source of liability for infringement of computer software copyright is based on the relevant laws - mostly referring to the relevant provisions of the Civil Code and the Intellectual Property Law. At present, the Regulations on the Protection of Computer Software Copyright and relevant judicial interpretations are only at the initial stage of legislation in this field, and have not yet formed a complete legal system. The existing provisions on "constituent elements" and "mode of undertaking" are mostly copied from similar legal systems, lacking legal characteristics in this field. Therefore, the legislation in the field of civil liability for computer software copyright still needs to be studied in depth, and more judicial practice cases need to be filled in.

References

- [1] Huixing Liang. Study on Jurisprudence and Legislation of Civil Law Theory [M]. Beijing: China University of Political Science and Law Press, 1993:256.
- [2] Guangping Kou. Tort Liability Law [M]. Beijing: China University of Political Science and Law Press, 2017:36-37.
- [3] Xiangjun Kong, Yang Li. Research on the Elements of Tort Liability (I) [J]. Political and Legal Forum, 1993 (1).
- [4] Ping Jiang. Civil Law [M]. Beijing: China University of Political Science and Law Press, 2007: 542.
- [5] Guangping Kou. Tort Liability Law [M]. Beijing: China University of Political Science and Law Press, 2017:45.