

The Extraterritorial Practice and Reference of the Legal Protection of Live Sports Footage

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Abstract

With the vigorous development of the online live broadcast industry, "sports + live broadcast" has become the mainstream sports event dissemination method in many parts of the world. my country's current legislation has not clearly stipulated the legal nature of live sports footage, and judicial practice has not formed a unified identification standard. How to protect live sports footage is an urgent problem to be solved in my country's judicial practice. From the perspective of comparative law, this paper analyzes the protection paths of the United States, the United Kingdom, and Germany for the live broadcast of sports events in judicial practice, draws on useful experience from other regions, comprehensively considers my country's national conditions and system construction costs, and expands the scope of the subject of broadcasting organization rights. The protection of the picture is difficult to promote the standardized development of the live broadcast industry of sports events.

Keywords

Live Broadcast of Sports Events; Comparative Analysis; Copyright; Broadcasting Organization Rights.

1. The Question is Raised

With the continuous development of Internet communication technology and the strong support of national policies, people can watch live sports events through various terminals, and the right to broadcast live sports pictures has become an important right. At the same time, illegal piracy and illegal rebroadcasting have become more and more serious, resulting in numerous rights disputes. As one of the new types of objects spawned by new technologies, live sports footage has not been included in the scope of my country's current "Copyright Law" objects, and my country's legal circles have not formed a general theory of its legal attributes, and the incomplete rights protection system has also This makes it difficult for rights holders to defend their rights. From the perspective of comparative law, this paper analyzes the legislative ideas of copyright law/copyright law in the United States, the United Kingdom, and Germany and the judicial protection models of sports event live broadcasts in various countries, draws on useful experience from outside the territory, and comprehensively considers my country's intellectual property development status quo and rights system. Considering the construction cost, it is proposed to propose a feasible way to protect the live broadcast of sports events.

2. Extraterritorial Practice of Legal Protection of Live Sports Footage

(1) U.S. law recognizes and protects the nature of live sports footage

Judicial practice in the United States recognizes live sports footage as audiovisual works, and believes that the illegal piracy and illegal rebroadcasting of live sports footage infringes the copyright owner's "right to perform to the public", and applies this right to regulate the

infringement. The selection of the protection mode of live sports events by American judicial practice is mainly based on the following three reasons:

First of all, the U.S. Copyright Act, which is based on utilitarianism, uses the standard of "minor creativity" to judge the originality of a work, and has relatively low requirements for the originality of a work. For audiovisual works, except for pure automatic shooting and pure remake, almost all other sounds and images belong to audiovisual works. The U.S. House of Representatives clearly addressed the issue of "the status determination of live broadcasts that are directed to the public and have no fixed form of recording and dissemination" in their report on the 1976 U.S. Copyright Act. The legal nature indicates that the U.S. Copyright Act recognizes that it meets the originality requirement of a work, recognizes it as a work, and protects it by copyright.

Secondly, the "US Copyright Act" adopts the means of legal fiction to identify the live broadcast of "accompanying recording" as meeting the "fixed" condition. Regarding the "fixation" requirement of audiovisual works, the "US Copyright Act" clearly stipulates that "fixed on a tangible carrier" is a condition for all works to be protected, and in order to solve the copyright protection problem of live broadcast, it also stipulates that "fixed by sound, picture" Or a work composed of sound and picture, if it is fixed at the same time as it is transmitted, it is "'fixed'" within the meaning of this law. The Congress report also addressed this issue, making it clear that live broadcast is different from pre-filmed recording The completed TV program does not meet the "fixed" requirement, but the U.S. judicial practice regards the live broadcast of "accompanying recording" as "fixed", so that it is subject to the same judicial protection as the TV program that has been filmed and recorded in advance. Judging from the legislation of various countries in the world, this kind of "fixation of legal fiction" is not common and has a certain degree of isolation.

Finally, the subject matter protected by the "US Copyright Act" is singular, and there is no other subject matter of protection except works. The legislation of the "US Copyright Act" is a typical copyright system, which is different from the "copyright-adjacent rights" dichotomy of the author's rights system. It adopts a single copyright system and collectively refers to "movie works and continuous pictures" in civil law countries as "movies". and other audiovisual works" are copyrighted. The legislative technology and rights system of the "US Copyright Act" determine that the live broadcast of sports events can only be protected as audiovisual works under this legal system.

(2) Recognition and protection of the nature of live broadcast of sports events by British law

The British Copyright Law is based on the labor value theory and adopts the principle of "sweat on the forehead", and divides works into three categories. The first category is original writing, drama, music and artistic works; Broadcasting; the third category is the copyright design of publications. The "UK Copyright Act" usually identifies live sports footage as "broadcasting" in the type of statutory works, and is protected by broadcasting copyright, mainly for the following three reasons:

First of all, it can be seen from the above description of the classification of works that the British Copyright Act only requires "originality" for the first category of works, because what is protected is the actual image and sound itself, not the techniques and techniques used to form the object. labor. Therefore, it is not necessary to judge its originality when discussing the identification of the nature of live sports footage under the British Copyright Act. Secondly, the "UK Copyright Law" has "fixed" requirements for sound recordings and films, and there is no legal fiction similar to the "fixed" law of the "US Copyright Law" in the legislation. Picture and sound effects do not meet the "fixed" requirements and cannot be protected by "sound recording copyright" or "movie copyright". Finally, the UK Copyright Act establishes a statutory type of work that does not presuppose "fixation" protection - broadcasting, which provides

protection for live audio broadcasts or live video broadcasts. In British judicial practice, disputes related to "broadcast" works are basically concentrated on the live broadcast of sports events.

(3) Recognition and protection of the nature of live broadcast of sports events by German law
The general theory in German legal circles is that, due to the lack of originality of live sports images, they cannot constitute "films and works created by methods similar to photography" stipulated in the "German Copyright Act", but only constitute "unable to be used as a film". Protected Motion Picture of the Work". , Germany identifies live sports footage as "active footage" mainly for the following reasons:

First of all, as the representative of the author's rights system, the German Copyright Law is based on transcendental idealism and regards personality as the core of copyright. High originality to reflect the author's personality. Although they affirm the labor of the producers of live sports footage, scholars who support the authorship system generally believe that it does not fully reflect the "personality" and "spirit" of the producers. Secondly, from the perspective of the nature of copyright rights, German legal circles believe that works have both personality attributes and property attributes, and property attributes cannot exist independently of personality attributes, and cannot be protected by copyright due to the insufficiency of the personality in the live broadcast of sports events. .

3. Inspiration and Reference from the Extraterritorial Practice of Legal Protection of Live Sports Footage

In the field of law, the current social development status, social consensus, and public policies of my country and foreign countries are very different. Therefore, when referring to foreign legislative experience and judicial practice experience, we should comprehensively consider my country's culture, society, legal background, and case facts. It is reasonable to draw lessons from and adapt to China's national conditions.

The German Copyright Law adopts the dichotomy of "movie works-sequential images", and my country's copyright law legislation adopts a similar idea to classify moving images into "audio-visual works-video products". According to this, some domestic scholars believe that the reason why my country's copyright legislation is The dichotomy system is adopted, referring to the authorship system of the European civil law system. As a representative country of the civil law system, Germany has high requirements for originality of film works. Therefore, when judging the originality of copyright works in my country, a higher originality standard should also be applied, and a higher originality standard should be applied. To distinguish between "audiovisual works" and "video recordings". This article believes that the above viewpoints are not accurate enough. First of all, although the legislators refer to the authorship system for legislation, they also refer to the copyright system represented by the United Kingdom and the United States in the legislative process. It is unknown whether the legislators have completely accepted the German authorship system. It can be seen from the disputes over "copyright" and "copyright" among scholars in the process of legislation of China's copyright law in the early years that the legislative system of author's rights has a certain reference value for my country's judicial practice, but it is directly accepted that the German copyright law has a direct impact on the live broadcast of sports events. The identification of the nature of the picture and the originality standards are unscientific and unreasonable; secondly, the German Copyright Law has a relatively complete system of adjacent rights, and there is no major difference in the degree of protection between adjacent rights and copyrights. Most of the problems are achieved through a relatively complete system of neighboring rights, and it seems that my country's current system of neighboring rights cannot achieve this level of protection. Therefore, our country cannot completely copy the originality requirements of the author's rights system.

Throughout the United States copyright law legislation, from the promulgation of the first federal "Copyright Law" in 1790 to the entry of the "Berne Convention" in 1989, the United States has never included neighboring rights in the copyright system of copyright law, and has not yet joined the protection of disseminators. The "Rome Convention" was separated from the two major conventions in the nearly 100 years of its early development, and became its own school in the world copyright/copyright legislation. In addition, "broadcasting" has never been included in the object of rights under the Copyright Law of the United States, which is very different from the countries that adopt the dichotomy system and other British and American countries represented by the United Kingdom. On the whole, the legislative model of the "US Copyright Law" is isolated, the originality standard is extremely low, and the object of rights is single. No matter from the perspective of the entire rights system or from the perspective of the functions played by each right, it is very different from my country's "Copyright Law". far, the reference value is extremely low.

The British Copyright Law, which is also a common law system, does not set up a separate adjacent rights system and incorporates broadcasting organization rights like the civil law system, but takes "broadcasting" as its legal type of work and is protected by "broadcasting copyright". . On the one hand, both my country and the United Kingdom have "fixed" requirements for the object of film, but there is no "fixed" requirement for the object of "broadcasting"; on the other hand, from the perspective of the function of rights in the legal system, "The function of "broadcasting copyright" in the British Copyright Law is very similar to the function of "broadcasting organization right" in my country's Copyright Law. Comprehensive consideration and analysis of the above aspects, the protection ideas of British judicial practice have certain reference significance for my country.

4. Improve the Path Selection of the Legal Protection of the Live Broadcast of Sports Events in My Country

Undoubtedly, the producers of live sports events have paid a certain amount of labor. The illegal piracy and illegal broadcasting of live sports events have led to the loss of audiences and interests of the rights holders, which seriously violated the rights and interests of the rights holders. Carry out timely regulation and corresponding degree of punishment. my country's current legal system has not clearly stipulated the protection of live sports footage, nor has a unified identification standard formed in judicial practice. In the face of new legal problems spawned by new technologies, corresponding countermeasures should be actively proposed. Through the analysis of extraterritorial legislation and practice in the previous article, fully combining the current situation and legal system of intellectual property development in my country, and learning from foreign protection experience, a feasible way is proposed for improving the protection of live broadcast of sports events.

(1) Improve the protection of live broadcasts of sports events under the "Copyright Law" system

In November 2020, the Supreme People's Court issued the "Opinions on Strengthening the Protection of Copyright and Copyright-Related Rights". Article 5 of the Opinion pointed out that "new types of cases such as live sports events should be properly heard in accordance with the law to promote the standardized development of emerging business formats". This article clarifies that cases related to the live broadcast of sports events should be protected in the field of copyright and related rights. Therefore, how to protect the live broadcast of sports events under the "Copyright Law" system is the key to solving the problem.

(2) Give full play to the function of broadcasting organization rights in the copyright system my country's current "Copyright Law" adopts the dichotomy system of "audio-visual works-video products" for the moving pictures. Analysis of the judicial status quo of the protection of

live sports scenes in my country's judicial practice shows that there are certain laws to solve this problem under this system. Dilemma applies. According to the practical experience of comparative law, and comprehensively considering the current situation of intellectual property development and social development in my country, to measure the construction cost of the property rights system and the integrity and stability of the system, this paper believes that the application of broadcasting organization rights to protect the live broadcast of sports events is an A relatively effective solution, through which protection can make full use of the purpose and its own characteristics of the establishment of neighboring rights, coordinate the relationship between copyright and neighboring rights, give full play to the function of broadcasting organization rights in the copyright system, and ensure that all legal provisions are "in accordance with their respective requirements". perform their duties", let alone the issue of "criteria for judging originality".

(3) Improve the subject system of broadcasting organization rights

Article 47 of the new Copyright Law expands the scope of the rights of broadcasting organizations to "information networks", and more comprehensively protects broadcasting organizations' "right to communicate to the public." This modification not only more fully protects the rights and interests of broadcasting organizations, but also confirms the trend and desirability of adjusting and protecting the live broadcast of sports events in the form of broadcasting organization rights. However, the premise of applying the protection of broadcasting organization right is to obtain the qualification of broadcasting subject, and the revised Copyright Law still does not cover other subject forms other than "radio stations and television stations". With the rapid development of communication technology, the forms of new media organizations are extremely diverse, and more and more new media organizations have entered the sports live broadcast industry. Like traditional broadcast organizations, these new media organizations also aim to produce live sports events. The program has paid labor and investment, and should have certain rights to the results of its labor. This paper believes that in the era of rapid development of new media technology, legislation should be based on practical needs, improve the main body system of broadcasting organization rights, include new media organizations in the main body of broadcasting organizations, and effectively protect rights holders in the live broadcast of sports events. Rights in emerging industries.

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