Research on Copyright Infringement of Short Video on Internet

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Abstract

With the continuous rise of the online short video industry, the copyright infringement of online short video has become increasingly serious. How to judge the short video infringement and how to allocate the responsibility between the short video platform and the author need further research and discussion. This paper takes "short video on the Internet" as the main research object, from the perspective of intellectual property protection, discusses the phenomenon of infringement of short video on the Internet, analyzes and studies the causes of copyright infringement of short video on the Internet, draws on the legislative and judicial practices of other countries, and puts forward suggestions for legislative improvement, so as to promote the sustainable and stable development of the short video industry and promote the progress of China’s cultural undertakings.

Keywords

Network short video; Copyright; Infringement.

1. Overview of copyright infringement of network short video

1.1. Introduction to network short video

Network short video is an emerging field that has gradually developed in recent years. It refers to the video that is broadcast for less than 5 minutes through the Internet and new media. It is different from the conventional video form, and breaks through the characteristics of traditional video, such as long playback time, long production cycle, high production cost, and short playback time, low production threshold, and low production cost. Users themselves can participate in the production and play of short videos. Due to the characteristics of short video on the Internet and the fire in the industry in recent years, more and more users choose to join the short video industry.

Nowadays, the online short video industry is developing more and more rapidly, attracting a large number of users. According to the Statistical Report on the Development of Internet in China, by June 2022, the number of short video users in China has reached 962 million, an increase of 28.05 million compared with December 2021, accounting for 91.5% of the total number of Internet users [1]. At present, online short video has become an industry with a large number of users and diverse work content, and a number of professional online short video production teams have emerged. The online short video industry is also constantly trying to break through innovation and integrate with other industries, trying to find higher quality and more meaningful video content and form.

1.2. Status of copyright infringement of short video on the Internet

According to the 2020 China Network Short Video Copyright Monitoring Report released by the Copyright Monitoring Center, from January 2019 to October 2020, among the 10 million works monitored by the Copyright Monitoring Center, the number of infringing short videos reached 30.0952 million, involving 2.72 trillion clicks. Among the monitored original authors, the infringement rate of exclusive original authors is up to 92.9%, and the infringement rate of non-exclusive authors is up to 65.7% [2]. This shows that in real life, the infringement phenomenon
in the field of online short video is very serious. The number of infringements has caused serious damage to the rights and interests of many original authors. In such an environment of high incidence of infringement, the enthusiasm of original authors to create excellent works is also a heavy blow, which is not conducive to the development and innovation of the online short video industry.

1.3. Analysis on the copyright of short network video
The precondition for defining the copyright infringement of short video on the internet is to determine whether the short video belongs to a work, that is, the copyright analysis of short video on the internet. Works refer to intellectual achievements with originality and can be expressed in a certain form in the fields of literature, art and science [3]. In other words, a work needs to meet three conditions, namely, it belongs to the field of literature, art and science, has originality, and can be expressed in a certain form of intellectual achievements. As a new video form, online short video shows a wide range of content to the public through short video content, including short sitcoms, skill sharing, and creative editing. From video creation script to editing, shooting and uploading, every step contains the author’s own thoughts and wisdom, which is the manifestation and externalization of the author’s thoughts. At the same time, the online short video enters the public’s view through shooting, editing and publishing. It has the author’s participation and contribution in the whole process. Finally, it can be spread and displayed through the network media, which can make the public perceive [4]. Therefore, online short video should belong to the category of works.

1.4. Identification standard for originality of network short video
Originality is the most critical substantive factor in determining whether short videos conform to the copyright law. Wu Handong (1990), a scholar, believes that the works are independently conceived and are not the same as those published by others [5], that is, they are created by their own independent thinking and do not copy the works of others. Professor Liu Chuntian (2009) believes that originality is originality, as long as there is innovation in form. That is, the selection and completion of the work in the creation process is the result of the author’s own choice, and is not deduced according to the determined format [6]. In short, there is no unified definition standard for originality at present, and different scholars have different views on the definition of originality.

2. Analysis of copyright infringement of short video on the Internet

2.1. Forms of infringement of copyright of short video on the Internet
The copyright infringement of network short video mainly includes two kinds, namely direct infringement and indirect infringement. Direct infringement refers to the act that the perpetrator infringes the relevant rights of the copyright owner without the permission of the copyright owner [7]. In the field of online short video, direct infringement is mostly manifested as plagiarism or secondary creation, such as the most common plagiarism of other creators’ video content or the interpretation of relevant film and TV series content, which may constitute direct infringement.

In the indirect infringement, the main performance is that the online short video platform forms a joint infringement with the perpetrator by helping or abetting the infringement, and the online short video platform bears the indirect liability. If the online short video platform receives a complaint and requires the platform to delete the infringing video or take relevant measures, and the platform does not take necessary measures after receiving the information, it may constitute an indirect infringement, or the platform does not fulfill the corresponding duty of care, it may also constitute an indirect infringement.
2.2. An Analysis of the Causes of Copyright Infringement of Network Short Video

Due to the continuous development of Internet technology, the emerging network short video industry has emerged. Due to the large traffic and high popularity of short video on the Internet, as well as its simple production, low cost and low threshold, more and more new forms of short video works have emerged. Behind the high popularity and high traffic, it has also led to a variety of short video copyright infringement problems. With the development of technology, many new short video production methods (such as mixed cutting and splicing) are becoming more and more common. The emergence of this new technology not only enriches the content and form of short video, but also makes the identification of infringement of short video on the Internet more complex and difficult. It is difficult to use the traditional identification method to determine.

At the same time, as the first threshold for the release of short video content, the online short video platform also failed to fully fulfill its relevant obligations in the review and management of short video, resulting in many infringing works flowing into the public view. In the process of short video publishing, the network short video platform party should first review its content to determine whether it is infringing, and then decide whether to publish it. However, in real life, the recognition of video content by the platform is not to review infringement, but to classify it and push it back to users with similar interests. This behavior of the platform has greatly promoted the intensification of infringement. What’s more, the infringement liability is fully transferred to the user, and the "safe haven" regulation is invoked to escape liability [8].

3. The legislative and judicial reference for solving the copyright infringement of short video on the Internet outside the country

3.1. On the principle of safe haven

The principle of safe haven originates from the Digital Millennium Copyright Act of the United States, which is intended to solve the problems arising in the process of copyright protection. China has basically followed this system. The principle of safe haven provides a certain degree of protection for the network service providers. At first, several types of exemption systems were provided for the relevant behaviors of the network service platform. Later, with the continuous development of the Internet technology, in order to prevent the platform from abusing the rules of safe haven to evade responsibility, the exemption scope of the network service platform was reduced [9].

3.2. Reference of extraterritorial experience on copyright infringement of short video in China

From the perspective of the responsibility requirements of the United States for the network service delivery platform, they will modify or improve the rules of the safe haven according to the changes of the times and the development of the industry, so that the rules can better follow up the social life and regulate the behavior of the platform. Therefore, China can also make dynamic adjustments when using this rule, and make changes in combination with China’s specific reality, so as to better protect the copyright of online short video and prevent more online short video platforms from abusing the safe haven rule to evade their responsibilities.
4. Legislative and judicial suggestions to solve the problem of copyright infringement of short video in China

4.1. Improve the safe haven system and enhance the platform’s duty of care
The safe haven system was originally designed to balance the interests of network service platforms and users, but with the continuous development of Internet technology, more and more network platform providers try to use the system to evade responsibility. In order to avoid this situation, the current rules of safe haven should be adjusted appropriately, and the duty of care of the platform should be strengthened in combination with the actual situation of China, so as to prevent the indirect infringement of the network service provider platform in the network short video.

4.2. Constantly innovate the system and improve the legal guarantee system
At this stage, the development of the short video platform has reached a mature stage, and the number of short video copyright infringement cases is increasing day by day, and the problems of long time and high cost of the obligee’s rights protection also follow. Therefore, the state must introduce new laws and regulations, innovate some laws and regulations, improve the relevant protection system, and play the role of guardian [10]. For example, the identification criteria for originality of works need to be properly handled and solved, and some provisions need to be updated in time according to social development and changes. At the same time, clarify the roles and responsibilities of relevant departments, strengthen industry supervision, and maintain the healthy environment of the online short video industry.

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References