

Study on Copyright Protection of Short Video Works

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Abstract: In recent years, with the rapid development of short video industry, the phenomenon of copyright infringement is also common. In order to solve the two prominent problems in the short video copyright infringement disputes, which are the unclear identification of short video works and the unclear demarcation of fair use, this paper analyzes the current situation of China's judicial practice from the perspective of short video copyright protection and leads to the specific discussion of the above two issues. Then through the investigation of Chinese laws and regulations, combined with the analysis and reference of foreign related theories, it is clear that the short video has the possibility of constituting a work, and the originality of the short video should be based on the investigation of the short video itself, and the specific analysis should be made in combination with the representative elements of judgment. Secondly, it is clear that the determination of the fair use of the short video should be based on the specific circumstances stipulated in the Copyright Law and the "three-step test" as the criteria. At last, the paper puts forward the suggestion of introducing transitional use to further refine and extend the criteria of fair use. Through the discussion of this paper, we can protect the copyright of short video. It is helpful to reduce the copyright infringement disputes of short video and maintain the orderly and healthy development of the short video industry.

Keywords: Copyright Protection; Short Video; Originality; Fair Use; Three-step Test

1. Introduction

Short video, driven by the rapid development of Internet technology, is a new form of

communication and information media after text, pictures and traditional video. As a hot industry today, short video brings huge benefits, but also accompanied by more serious infringement problems, the characteristics of short video itself also make its copyright protection face many difficulties. Therefore, it is of great significance for the healthy development of short videos to clearly define the problems existing in the copyright protection of short videos. In the short video infringement disputes, the more prominent two The point is the controversy over the identification of short video works and the fair use of infringement. To clarify whether short video belongs to the type of copyright protection works is the premise of discussing the copyright protection of short video and the starting point of protecting the interests of short video creators; Distinguishing the boundaries between infringement and fair use in the process of short video creation is conducive to protecting and encouraging the enthusiasm of original works, balancing the interests of original creators and secondary creators, encouraging the creation of short videos and protecting the public's enthusiasm for creation. Copyright Law As a law to protect the rights and interests of authors, balance the interests of the public, encourage innovation and promote the development of cultural undertakings, and provide effective regulation for short videos, we can safeguard and balance the interests of all parties, respond to and encourage the enthusiasm of the public to participate in the creation, promote the prosperity of short video cultural undertakings, and make the short video industry more healthy and orderly. So as to radiate greater economic vitality [1,2].

2. Overview of Short Video and Analysis of Judicial Practice of Copyright Protection

2.1 Short Video Overview

Short video refers to the type of video produced on smart device terminals and played or watched on new Internet platforms such as tremolo and fast-hand. Compared with traditional video, the most remarkable feature of short video is that the duration is shorter, generally between ten seconds and ten minutes. Secondary creation of short video is a special type of short video derived from the characteristics of short video creation and dissemination. It is a new video created on the basis of original video through the process of editing, combining and re-dubbing its image, audio and other content. Second creation Short video has the following characteristics: First, it needs to be based on the previous video, rather than generated out of thin air. Secondary creation of short videos must use other works, and this use must constitute an important part of the secondary creation of short videos, and can not be used in detail. Secondly, the second creation of short videos must be creative, that is, on the basis of the works used, the second creation of short videos needs to have new ideas or forms of expression. Originality is the premise of being protected by copyright law, and the second creation of short videos also needs to be edited. Reorganization and other ways to create new content, not just a simple reproduction of the original video [3].

2.2 Judicial Status of Short Video Copyright Protection

After sorting out and analyzing the relevant cases of copyright infringement disputes of short videos, we can find that the focus of disputes in most cases includes two aspects: first, the judgment of whether short videos are original, that is, whether short videos can be protected by copyright law as works; Secondly, it is the identification of infringement and fair use of the second creation of short videos on the use of prior videos. As for these two controversial points, in different cases, the judgment ideas and results of each court are also different. For example: in the "fast". In the case of "Hand v. Huaduo", the court pointed out that although the short video involved in the case was only tens of seconds long, the length of the video was not the decisive factor of creativity. It combines music, performance, special effects and other contents, and is the original expression of the author's thoughts and

emotions, which is finally recognized as a kind of electronic work to be protected. In the case of "Liang Zhi v. Tianying Jiuzhou", the court pointed out that the short video was simple when it recognized the nature of "returning to the wolves". Continuous mechanical settings, simple content, single scene, do not conform to the legal provisions of the creative height of similar electrical works, and ultimately identified as video works, to be protected by neighboring rights. (Dispute over copyright ownership and infringement between Liang Zhi and others and Beijing Tianying Jiuzhou Network Technology Co., Ltd., Beijing Chaoyang District People's Court (2016) Jing 0105 Min Chu 37647, Beijing Intellectual Property Court (2018) Jing 73 Min Zhong No.1655)

It can be seen that for the identification of short video works, the court usually takes the creative criteria of film works and similar works as the consideration factors of short video creativity, and produces different judgment results for the identification of short video attributes due to the different creative heights [4-6].

2.3 Problems in Short Video Copyright Protection

2.3.1 There are different standards for identifying the originality of short videos Whether a short video belongs to the works protected by the Copyright Law is the premise to determine whether it can be protected by the Copyright Law. It is a necessary condition to explore other short video copyright protection issues, and it is also the primary focus of debate between the two sides in short video copyright infringement disputes. To judge whether a short video is a work, first of all, we should judge whether the short video has the attributes of works stipulated in the Copyright Law, and originality plays an important role in the identification of works. As far as originality is concerned, it does not have a relatively definite criterion. Certain complexity and uncertainty. As far as short videos are concerned, their various contents and forms make it difficult to measure the originality of different short videos with a unified standard in general. In addition, its short duration is often regarded as an obstacle to its originality [7].

Some scholars believe that the length of short video limits the creative height of short video content, and the creator can not invest enough intellectual work to reach the height of the work in just a few minutes of video. Opponents argue that time.

Length is not the limiting factor of originality, and the criterion for judging is only whether the author has made a personalized expression in the short video. If the short video creator has a personalized expression, the short video is original and conforms to the constituent elements of the work. Therefore, there is an urgent need for a relatively clear and unified standard of originality to analyze the originality of short videos [8].

2.3.2 The definition of fair use of 3.2 short video is vague

The closest legal provision to the fair use of secondary short videos is the second paragraph of Article 24 of the Copyright Law, that is, the case of "appropriate citation". In addition to this provision, in judicial practice, the factors to be considered in determining whether the second creation of a short video constitutes fair use also include: the publication of the prior work, whether the purpose of use is for introduction, comment, whether the proportion of use is reasonable, and whether it will lead to unreasonable damage to the interests of the prior work. There is no doubt that whether the proportion of use is reasonable or not needs to be specifically identified in the case, which can not be issued. Criteria for determining the body. The consideration of whether it will constitute unreasonable damage to the use or interest of the prior work is similar to the judgment of the "third step" in the three-step test mentioned above, but the judgment here can not give specific provisions.

In most cases, the legal provisions that can be invoked in the defense of fair use of short videos are "appropriate citation". However, "appropriate reference" itself does not have clear and definite criteria. The flexibility and uncertainty of the provisions require the judge to make a concrete analysis of the specific content of the case, leaving a certain discretion space for the judge. But at the same time, uncertainty makes the law unable to provide relatively standardized and standardized guidance, so in practice, there is often a dilemma of different judgments in the same case. The additional provisions in the new law

can indeed. Some of them are not for the purpose of introduction and comment, and it is difficult to incorporate other specific situations of fair use provisions, and only short videos for the purpose of public appreciation are included in the embrace of fair use. But in fact, the application of this article still depends on the guidance of the general clause of fair use. As far as Chinese law is concerned, the "three-step test" itself is an abstract and vague definition, which is also flexible, so the application of the new provisions lacks a clear guiding basis [9].

3. Legal Analysis of Originality Identification of Short Video

3.1 Criteria for Originality

The Copyright Law of the People's Republic of China stipulates: "For the purpose of this Law, the term "works" refers to original intellectual achievements in the fields of literature, art and science that can be expressed in a certain form." (Article 3 (1) of the Copyright Law) China's existing legal provisions do not make relatively clear and specific provisions on originality, and there are also disputes about the criteria for identifying creativity in the academic circles, which can be roughly divided into the following three different ways of thinking: the first is that the requirements for creativity are relatively low, that is, the works are created independently by the author, that is, they have the most basic criteria for creativity; the second is that the minimum creation is satisfied. On the basis of sex, the expression of thoughts and feelings in the work should be able to reflect the author's personality or reflect the author's personality [10].

Seeking works needs to have a certain creative height. In this case, even if the work created by the author is the same as or similar to the work of others, it does not affect the identification of its originality; the third is to consider the two criteria comprehensively, requiring the work to meet the creative necessity criteria, while also considering the work as the author's intellectual achievement, that is, the expression needs to reflect the author's thoughts or personality [11,12].

3.2 Identification and Analysis of Originality of Short Video

The originality of short video is the judging factor of short video works. Specifically, there is basically no dispute about the independent creation requirements of short videos. From the above, it can be seen that both the copyright system and the author's right system believe that the author needs to complete the work independently, and the short video works also need the author's independent creation.

The judgment of the level of creativity. The author believes that, first of all, the length of short video can not be the criterion to determine its creativity, and the short video does not mean that the author has not invested enough intellectual work. On the contrary, the theme, picture, music and expression of many short videos have a high level of creation. Although the combined works are only a few minutes, they still fully express the author's thoughts and feelings and give the audience the enjoyment of beauty. Therefore, the length of time is not a factor to consider the creativity of short video, not because of short video. If the duration is short, it is concluded that all short videos can not meet the requirements of a certain height of creation, and then that short videos are not original. Instead, we should specifically analyze whether the content of the short video has creative expression.

Secondly, for the consideration of the originality of short video, we can not simply compare its creativity with other works in copyright law, such as long video works such as movies, movies and TV dramas. It should be noted that the content and volume of long videos such as movies are several times that of short videos, and the creative elements contained in them are far from that of short videos, so it is biased to compare them with movies and other works when judging the creativity of short videos. The creative investigation of short videos should be limited to the types of short videos and divided according to specific problems. Analyze the method to judge whether the short video is creative or not.

Finally, the author believes that the identification of the originality of short videos should focus on the existence of originality rather than the level of originality. It is not practical to require short videos to be highly creative. In today's era of short videos created by the whole people, the recognition of high originality may make many short videos

unable to be protected by copyright, and the enthusiasm of short video creation may be greatly affected when the rights and interests can not be guaranteed. The lower requirement for originality is more in line with the characteristics of short videos, and is also conducive to the realization of the purpose of copyright law to encourage creation. Therefore, it should be considered that as long as it has independent creation and basic creative height, it can be recognized that short videos are original, constitute works and are protected by copyright law.

4. Legal Analysis on the Determination of Fair Use of Short Video

4.1 Criteria for the Identification of Fair Use

Fair use system is an important part of copyright law. The purpose of the establishment of fair use system is to fully protect the rights and interests of copyright owners and give them certain monopoly rights, at the same time, considering the needs of the public for knowledge and information, to determine in the form of legal provisions that the use of works without permission does not constitute infringement, so that the public other than the oblige can use the relevant works. The system of fair use embodies the "right" based on safe guarding the interests of the author or the oblige in the copyright law and the interests of the public. The "restriction" based on it is the balance between the interests of copyright owners and the public, and also the embodiment of the legislative purpose of copyright law to protect rights and interests, encourage creation and promote the prosperity and development of cultural undertakings.

4.2 Analysis of the Identification of Fair Use of Short Video

Before the amendment of the Copyright Law, the "three-step test", as the guiding principle of fair use, was only stipulated in the Regulations for the Implementation of the Copyright Law, which also caused some problems, for example, in the judicial practice of determining fair use, judges sometimes did not strictly abide by the criteria of the "three-step test", and even made laws by judges. This amendment clearly stipulates the "three-step

test method" in the provisions of the Copyright Law, which can highlight the "three-step test method" as a principled criterion for judging fair use. The importance of.

It is of great significance to clarify the principle judgment standard of fair use, the "three-step test method". First of all, what needs to be clarified is the order of application of the "three-step inspection method" and the specific circumstances stipulated in Article 24 of the Copyright Law. The Copyright Law transforms the former closed enumeration mode into the mode of "general clause + specific situation+ bottom-up clause". The first step of the "three-step test" mentioned above is to use it in terms of specific circumstances, which refers to the twelve special circumstances stipulated in the article. The reason for setting specific applicable situations is reasonable. The use system is the limitation and exception of copyright protection, so neither the judge's application in judicial practice nor the speculation of the application of the bottom-up clause can arbitrarily go beyond the specific circumstances to expand the interpretation. Therefore, when determining the fair use system, it should not only belong to the specific circumstances stipulated in the Copyright Law, but also conform to the provisions of the principled criteria.

For the second and third steps of the "three-step test method", the criteria are actually vague, and there is a possibility of unclear definition in judicial practice. In this case, many judges and scholars have turned their attention to the "four-element criterion". The consideration of transitional use in the first element "purpose and nature of use" of the "four-element test method" introduced above, and the third element "proportion of use" as a more specific judgment factor, are some of the more typical ones in China's "three-step test method". The problem of paste provides a certain solution. Specifically, it means that in the process of identifying fair use, "the purpose of using the work is different from that of the original work" and "the proportion of use is relatively small" are included in the judgment process of the "three-step test method", so as to achieve the auxiliary effect of the three steps.

5. Suggestions on the Improvement of Copy

right Protection of Short Video

5.1 Refine the Elements of Originality Judgment of Short Video

Short videos are created in various forms and types, and their contents are still constantly updated and changed. Based on the creative characteristics of short videos, it is not practical to set a strict and unified criterion for originality, and it may play an adverse role in restricting the creative freedom of short videos. Therefore, when identifying the originality of short videos, we can use some representative elements of proof of originality to help identify the originality of short videos in practice. This proof of originality is reflected in the creation process of short videos. Specifically, you can press According to the order of short video shooting and production, the material selection before short video creation, the shooting method of short video in creation and the video processing after shooting are taken as the detailed criteria to consider originality.

First of all, the creator will choose and choose the material based on the thoughts or emotions he wants to express, which can reflect the creator's personalized expression and personality. Secondly, the shooting technique in the process of short video creation can be used as an original consideration factor, because in this process, it may involve the short video creator's choice of shooting angle and the arrangement of shooting pictures, which can show the creator's personalized expression. Finally, the post-production of short video is also the originality of short video. Considerations. In fact, the production process of editing, dubbing and special effects in the later stage of short video can make short video have obvious personalized differences, which is an intuitive reflection of the intellectual labor and personalized creation of short video creators.

Therefore, in the process of identifying originality, we should not define the originality of short videos by vague and general standards, but pay attention to the short videos themselves, and reasonably identify the creative elements of short videos according to the above-mentioned typological elements, so as to judge whether they are original or not.

5.2 The Conversion Use should be Included in the Criteria of Fair Use.

5.2.1 The connotation of conversion use

In the judicial practice of fair use in the United States, conversion use is a decisive factor that plays an important role. With the development of time, it has been gradually enriched and improved, from the single "content transformation" at the beginning to the situation of adding the "purpose transformation" standard today. Content conversion means that the new work needs to add new content, new meaning or new expression compared with the original work; content conversion means that the new work only needs to use the purpose of the original work different from the original work, and does not require the conversion of the content of the original work. Turn the specific criteria for determining interchangeable use are: the purpose of use, the nature of the work used, whether the content of use belongs to the essence of the work and whether it will affect the potential market of the work.

Conversion use itself also has certain flexibility, and the identification of conversion use is not only a single consideration. Elements, the degree of convertibility and other factors, such as whether the original work produces substitution, work together to balance the identification of the use of convertibility. On the basis of constituting convertible use, it also needs the supplementary identification of other factors to comprehensively determine whether it constitutes fair use. The necessity of reference and the proportion of reference are two common judgment elements. If the degree of conversion is high, the new work does not have the substitution for the original work, at this time, the judgment of the proportion of quotation can be less strict, and can be relaxed to make a comprehensive judgment of the new work. After the product will not have a competitive substitution effect on the original work, it can be determined that it constitutes a fair use.

5.2.2 The significance of convective use of 2.2 to the criteria of fair use of short video

The transnational use rule takes the difference in the purpose and manner of use as the criterion, and for short videos, it can solve the adverse restrictions on the identification of short videos as fair use from the perspective

of ordinary fair use, such as commercial use, citation quantity and other factors. At the same time, it can also provide solutions for some short videos that can not be included in the scope of "appropriate citation" to constitute a reasonable use of prior works, and respond to the needs of the public to create and express in the form of secondary short videos, which is a move to adapt to social development and scientific progress.

Specifically: First of all, the application of the rules of transitional use, on the basis of focusing on the purpose of use and expression, weakens the restrictions on the number of citations of prior works, and even when the purpose of use is different, secondary creators can use all parts of prior works. In this way, it coincides with the second creation of short videos, which uses a large number of other people's prior videos as the creation mode. Such short videos will no longer be at a disadvantage in the determination of fair use because of the large number of citations. Secondly, American courts have denied the impossibility of commercial use in judicial practice. The inference of fair use is that in the case of conversion use, "commercial use" is no longer a condition to prevent fair use, and if it belongs to commercial use, it may also constitute fair use, thus breaking the inevitable link between commercial use and unreasonable use of secondary short videos. In reality, there are many such short video authors who create works and upload them to relevant platforms. Although the original intention of creation is not for profit, they actually get traffic and remuneration. When the rules of conversion apply, this kind of short video will not. Excluded from fair use because it constitutes commercial use.

6. Conclusions

As far as the originality of short video is concerned, we should jump out of the idea that the creative criteria of film works and similar works are regarded as the criteria for the originality of short video, and combine the characteristics of short video itself to require short video to have a basic creative height. In the process of judging the height of this basic creation, we can examine and define it from several representative angles. For the invocation of the defense of fair use, we should take into account the identification of

the specific circumstances stipulated in the Copyright Law and the use of the "three-step test" as a principled criterion. Use. In addition, taking "convertible use" as a further refinement and expansion of the application of the fair use system will help to provide more perfect protection for short videos.

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