

Research on Copyright Infringement Identification of Secondary Creation Short Videos

Jiahui Sun

Shanghai Normal University, No. 100 Guilin Road, Xuhui District, Shanghai, China

Abstract: Driven by mobile internet and digital communication technologies, short video secondary creation short videos have become a vital component of the online cultural ecosystem. Through editing, narration, remixing, and imitation techniques, these creations achieve content innovation and rapid dissemination, enriching public cultural expression channels. However, secondary creation of short videos 'adaptation of original content has triggered numerous copyright infringement disputes, presenting judicial challenges such as inconsistent originality criteria, ambiguous fair use boundaries, complex platform liability determinations, and fragmented infringement identification rules [1]. This study focuses on copyright infringement determination in short video secondary creation short videos. By integrating China's Copyright Law provisions and judicial practices, it defines the conceptual framework and classification system of secondary creation short videos, analyzes core infringement challenges, and examines practical controversies regarding originality assessment, fair use application, and platform accountability. Drawing on theoretical tools including transformative use theory, three-step test methodology, and four-factor analysis framework, the research proposes concrete solutions: establishing unified judicial standards, refining fair use regulations, restructuring platform duty of care, and improving authorization mechanisms. These measures aim to balance the interests of copyright holders, creators, platforms, and the public, achieving dynamic equilibrium between copyright protection, cultural innovation, and industrial development [4].

Keywords: Short Video; Secondary Creation Short Videos; Copyright Infringement; Originality; Fair Use; Platform Liability; Identification Dilemma; Liability Delineation;

Governance Approaches

1. Introduction

1.1 Research Background

The iterative advancement of digital technologies has propelled the short video industry into a phase of explosive growth. Characterized by fragmentation, lightweight format, and rapid dissemination, short videos have become the primary medium for public information acquisition, entertainment consumption, and content creation. Secondary creative adaptations of short videos (hereinafter referred to as "secondary creation short videos") utilize existing film, music, and graphic materials through editing, dubbing, commentary, and adaptation to produce new audiovisual content. These adaptations encompass diverse formats such as film commentaries, compilation compilations, parody parodies, and analytical commentaries, which not only lower creative barriers but also ignite nationwide creative enthusiasm [5]. However, beneath the prosperity of secondary creation short videos, copyright infringement issues have become increasingly prominent: unauthorized use of core segments from others' works, complete content transplantation and editing, and substantive substitution of original works for distribution have become frequent occurrences, sparking intense conflicts of interest among copyright holders, creators, and short video platforms [8]. While China's current Copyright Law has introduced a three-step review mechanism and catch-all clauses to refine the fair use framework, it lacks explicit provisions addressing the unique characteristics of derivative short videos. Judicial practice reveals inconsistent rulings: some courts determine the copyright status of secondary creation short videos based on "minimum creativity," while others require higher creative standards. The application criteria for fair use remain ambiguous, with unclear definitions of "appropriate citation" in

terms of both quality and quantity. Platforms frequently exploit the "safe harbor doctrine" to evade liability, and infringement control obligations under algorithmic recommendation systems prove challenging to enforce [6]. The dual challenges of low infringement costs and high litigation expenses not only undermine legitimate rights holders' interests but also hinder the standardized development of derivative content industries [12]. Against this backdrop, systematic research on copyright infringement determination rules for derivative short videos and clarification of boundaries between infringement and fair use have become critical issues in digital-era copyright law theory and practice.

1.2 Research Significance

1.2.1 Theoretical significance

This study focuses on derivative short videos as an emerging creative format, integrating fundamental principles of copyright law with digital dissemination characteristics to analyze legal characterization of secondary creation short videos, infringement elements, and defenses. It addresses theoretical gaps in existing legislation regarding new creative forms. By synthesizing originality assessment criteria, fair use rules, and platform liability theories, the research constructs an infringement determination framework tailored for derivative short videos, providing reference perspectives for subsequent theoretical studies [4].

1.2.2 Practical significance

By integrating judicial precedents and industry practices, this study establishes concrete rules for identifying copyright infringement in derivative short videos, providing judicial authorities with standardized adjudication frameworks. It delineates legal boundaries for creators of secondary creation short videos to guide proper utilization of prior works, clarifies infringement control obligations for short video platforms to enhance platform accountability, and offers copyright holders actionable guidelines to reduce litigation costs [1]. Ultimately, these measures achieve the triple objectives of protecting original creations, fostering innovation, and regulating the industry ecosystem.

1.3 Current Research Status at Home and Abroad

1.3.1 Current domestic research status

Chinese scholars have conducted multidimensional research on copyright infringement issues in derivative short videos, focusing on four key dimensions: First, determining the creative nature of secondary creation short videos. The primary controversy centers on originality criteria. Some scholars advocate adopting the "independent creation + minimal creativity" standard to align with short video production characteristics, while others emphasize the need for identifiable creative value to prevent simplistic editing from obtaining legal protection [8]. Second, applying fair use principles. Scholars generally agree that the current closed enumeration model struggles to accommodate derivative scenarios, proposing the integration of transformative use theory combined with three-step verification methods and four-factor analysis frameworks to refine "appropriate citation" assessment criteria [2,7]. Third, defining platform responsibilities. Regarding business models like algorithmic recommendations and monetization strategies, scholars propose transcending traditional "notice-and-takedown" rules, strengthening platforms' pre-filtering obligations, and quantifying application standards for the red flag principle [5,12]. Fourth, infringement governance approaches. Researchers advocate establishing a multi-dimensional governance system encompassing authorization mechanisms, collective management frameworks, technical safeguards, and community collaboration [4,9].

1.3.2 Current research status abroad

The international digital content industry has developed earlier, with relatively mature copyright regulatory frameworks for secondary creation short videos. The United States adopts a transformative use-centered approach, employing a four-factor analysis method to flexibly determine fair use while minimizing commercial considerations and focusing instead on whether the use endows the original work with new expressions or meanings [7]. The European Union emphasizes technical governance, requiring platforms to implement copyright filtering systems for preemptive prevention, while safeguarding creative freedoms such as commentary and imitation through exception clauses. Japan has introduced UGC exception clauses to provide legal immunity for non-commercial secondary creation short videos, balancing rights protection with creative freedom [7]. These international

experiences offer valuable references for China, though they must be adapted to local conditions by considering the scale of the short video industry, creative ecosystem, and legislative framework.

1.4 Research Methods and Content

1.4.1 Research methods

This study employs three methodological approaches: 1) Literature review to synthesize foundational theories of copyright law and research findings on derivative short videos; 2) Case analysis incorporating judicial precedents to examine contentious issues in infringement determination and adjudication logic [3]; 3) Comparative analysis drawing on international experiences in fair use provisions and platform liability regulations; 4) Normative analysis grounded in China's Copyright Law and judicial interpretations to provide evidence-based recommendations for localized infringement determination frameworks.

1.4.2 Research content

This paper is structured into six sections: The introduction outlines the research background, significance, and current status; Chapter 2 defines the concept, characteristics, and types of derivative short videos; Chapter 3 analyzes practical challenges in copyright infringement determination for derivative short videos; Chapter 4 establishes core rules for infringement determination, including originality assessment, infringement criteria, and fair use application; Chapter 5 clarifies platform responsibilities and multi-stakeholder governance approaches; the conclusion summarizes research findings and future directions.

2. Theoretical Framework for secondary creation short videos

2.1 Concept and Characteristics of Secondary Creation Short Videos

Short video secondary creation short videos refer to creative productions that incorporate personalized expressions through editing, splicing, dubbing, narration, adaptation, or parody based on existing published works [4]. Key characteristics include: 1) Material dependency-creations must be grounded in original works and cannot exist independently; 2) Lightweight creation-low entry barriers and short production timelines that meet fragmented creation and dissemination needs [8]; 3)

Expressive innovation-reinterpreting original works through rearrangement and commentary to impart new meanings and functions; 4) Extensive reach-rapid algorithm-driven dissemination ensures broad audience coverage; 5) Commercial relevance-some secondary creation short videos monetize through traffic sharing and product promotions, balancing cultural expression with commercial attributes [5].

2.2 Typological Classification of Secondary Creation Short Videos

Based on creative approaches, material utilization levels, and degree of originality, derivative short videos can be categorized into four types [4]:

(1) Replication and adaptation category: Unauthorized direct extraction and splicing of original work fragments without personalized expression, merely simple reproduction with minimal originality;

(2) Commentary and analysis category: Based on the original work, it adds narration, commentary, and subtitles to interpret and analyze the content of the original work, demonstrating a certain degree of originality.

(3) Mixed compilation category: Selecting clips from multiple works for reorganization and musical arrangement to create new audiovisual content with high originality;

(4) Parodic adaptations: Based on the original work, they achieve satirical and humorous effects through parody, adaptation, or subversive interpretation, possessing independent expressive value.

The aforementioned classification provides a typological foundation for infringement determination, with significant differences in infringement risks and the applicability of fair use across various types [9].

2.3 The Essence of Rights Conflicts in Secondary Creation Short Videos

The copyright disputes surrounding derivative short videos fundamentally reflect a conflict of interests between the exclusive rights of original copyright holders and the creative freedom of secondary creators, as well as the public's right to cultural access [13]. Original copyright holders possess exclusive rights, including reproduction rights, online dissemination rights, and adaptation rights, with unauthorized use constituting infringement. Secondary creators

leverage original works to foster innovation, serving as vital platforms for cultural dissemination and content evolution. Meanwhile, the public's consumption of derivative short videos for information and entertainment aligns with digital-era cultural demands. The core objective of copyright law lies in striking a balance among these three parties—protecting original creators' incentives while providing reasonable space for secondary creation short videos [5].

3. Practical Challenges in Determining Copyright Infringement for Secondary Creation Short Videos

3.1 Inconsistent Criteria for Originality Assessment and Confusion in Determining Work Attributes

Originality serves as both the prerequisite for copyright protection and the basis for infringement determination in derivative short videos, yet judicial standards remain inconsistent [6]. On one hand, there are divergences in creative requirements: some courts adopt a "minimum creativity" standard, considering works complete with independent creation and personalized elements sufficient for copyright protection [5]; others demand higher creative standards, dismissing simple editing or montage as non-works. On the other hand, methodological gaps exist—lack of differentiated standards for different derivative formats and absence of unified criteria for assessing originality in creative forms like remixes and parodies have led to inconsistent rulings across similar cases [8]. For instance, certain film commentary videos are deemed original, while similar works are classified as mere copies, resulting in inconsistent judicial interpretations.

3.2 Ambiguous Boundaries of Fair Use and Lack of Standardized Application of Defenses

Fair use serves as the primary defense mechanism for derivative creators, yet current legal frameworks exhibit significant shortcomings [2]. Firstly, the statutory enumeration model remains rigid: Article 24 of China's Copyright Law adopts a closed-ended enumeration system with only 12 scenarios, failing to directly incorporate common derivative short video practices such as narration, montage, and parody, while the catch-all clause requires strict application [7]. Secondly,

ambiguous definitions of "appropriation" exist: No clear standards define the quality or quantity of usage, with assessments focusing solely on duration ratios rather than substantive content. Even brief use of core original work segments may constitute infringement [6]. Thirdly, transformative use remains unimplemented: The widely recognized academic theory of transformative use has not been incorporated into legislation and is rarely applied in judicial practice, leading to wrongful convictions of secondary creation short videos with novel expressions [3]. Fourthly, commercialization criteria are overly absolute: Some courts exclusively use profit-making potential as the sole criterion for denying fair use, neglecting the transformative value of creative adaptations [7].

3.3 Fragmented Rules for Determining Infringement Composition, Posing Challenges in Identifying Substantial Similarity

The determination of copyright infringement in derivative short videos must adhere to the "access + substantial similarity" rule, yet practical implementation faces challenges [8]. Firstly, the presumption of access remains ambiguous: There is no unified standard for determining how derivative creators "access" publicly available prior works. Secondly, conflicting methods exist for assessing substantial similarity: Judicial practice employs both the abstract separation approach (separating ideas from expressions) and the holistic perception approach (judging based on average audience perception). Given the fragmented usage characteristics of derivative short videos, these two methods yield significantly divergent outcomes [8]. Thirdly, infringement characterization lacks clarity: The boundaries between infringement of reproduction rights, adaptation rights, and information network dissemination rights are often conflated. Simplistic editing is mistakenly deemed as infringement of reproduction rights, while explanatory adaptations are incorrectly classified as infringement of adaptation rights, resulting in inconsistent legal logic.

3.4 Complex Definition of Platform Liability and Abuse of the Safe Harbor Principle

Short video platforms, as primary carriers for derivative content distribution, face significant controversies regarding liability determination [11]. Firstly, ambiguous role definitions: These

platforms simultaneously serve multiple roles as storage providers, algorithmic recommendation engines, and revenue generators. They profit from algorithmic amplification of infringing content while claiming exemption from liability under "technological neutrality" [5]. Secondly, inadequate standardization of duty of care: Traditional "notice-and-takedown" mechanisms prove ineffective in algorithmic recommendation scenarios, with platforms failing to implement proactive filtering or real-time monitoring, often turning a blind eye to flagrantly infringing "red flag" content [11]. Thirdly, complex fault assessment: The quantification of "should-know" and "knowingly" obligations under algorithmic recommendation systems remains challenging, enabling platforms to evade liability by claiming ignorance—a practice that severely hinders rights holders' ability to seek redress [12].

3.5 High Costs of Rights Protection and Inadequate Mechanisms for Rights Relief

The infringement of derivative short videos exhibits three key characteristics: fragmented infringing entities, rapid dissemination, and evidence collection challenges, posing multiple obstacles for rights holders in seeking redress [1]. Firstly, identifying liable parties proves difficult: anonymous users posting infringing content are often denied access to real-name verification by platforms, complicating accountability. Secondly, evidence collection incurs high costs: the ephemeral nature of short video dissemination and frequent content deletion make digital evidence preservation challenging. Thirdly, compensation amounts remain inadequate: statutory damages standards are disproportionately low, failing to adequately compensate rights holders and perpetuating a vicious cycle of "low infringement costs versus minimal compensation returns" [5].

4. Core Rules Construction for Determining Copyright Infringement in Secondary Creation Short Videos

4.1 Standardizing Originality Assessment Criteria and Clarifying Work Attributes

In line with the creative characteristics of derivative short videos, a unified standard of "independent completion + minimal creativity" should be established, abandoning excessively high creative requirements [8]. The specific evaluation criteria are as follows:

(1) Independence requirement: The work must be independently completed by the creator, without plagiarism or reproduction of others' secondary creation short videos.

(2) Creative element: The creator incorporates personalized choices in material selection, editing and arrangement, voice-over narration, and expression presentation, demonstrating identifiable intellectual achievements rather than mechanical reproduction.

(3) Typified and differentiated judgment: Replication and transplantation categories lack originality and do not constitute works; commentary and review categories, montage and compilation categories, parody and adaptation categories, if incorporating personalized expressions, are all recognized as constituting works [4].

(4) Excluded scenarios: mere factual piecing together or unoriginal fragment enumeration that fails to meet the requirements of originality.

4.2 Clarify the Constitutive Elements of Infringement and Standardize the Determination of Substantial Similarity

The infringement of copyright in derivative short videos must meet four essential elements: first, the prior work used is protected under copyright law; second, it is performed without the copyright owner's permission; third, exclusive rights control acts such as reproduction, adaptation, or information network dissemination are implemented; and fourth, there are no statutory exemptions [8].

The core focus is on substantive similarity assessment, establishing the rule of "primarily abstract separation method with holistic perception method as supplementary" [8]:

(1) The first step involves abstract separation: extracting the ideological content from the original work and secondary creation short videos while preserving original creative expression.

(2) Step 2: Substantive Comparison-Verify whether the original content used in secondary creation short videos constitutes the core expression, key plot elements, and essential segments.

(3) Step 3: Audience Assessment-Using the general public's perception as a benchmark, determine whether secondary creation short videos share a cohesive visual similarity with the original.

(4) Quantitative criteria: The use of core

expressions from the original work (such as key plotlines, iconic scenes, and pivotal dialogues) is deemed substantively similar regardless of duration. The use of non-core segments without replacing the original expressions does not constitute substantively similar.

4.3 Refining Fair Use Rules and Incorporating Transformative Use Theory

Building upon China's Copyright Law three-step test framework, this study introduces the transformative use theory and integrates the four-factor analysis method to establish a reasonable use evaluation system for derivative short videos [2,7].

(1) Step 1: Legitimacy of Purpose and Transformative Judgment

The use must serve legitimate purposes such as commentary, interpretation, teaching, or news reporting, and possess transformative value—that is, it endows the original work with new expressions, meanings, or functions rather than merely substituting it [7]. Commercial considerations do not absolutely negate fair use but serve only as a factor of evaluation. If the use demonstrates high transformative value, even profit-making may be deemed fair use.

(2) Step 2: Nature of the Work Used

Published works and fictional works are more likely to constitute fair use; unpublished works and documentary works require greater caution in use to avoid infringing upon the right holder's publication rights and privacy interests [9].

(3) Step 3: Quality and quantity of the utilized portion

Discard the sole reliance on duration ratios and adopt the principle of "quality over quantity" [6]: utilize non-core segments of the original work with moderate citation proportions to meet the requirements of "appropriate citation"; employ core and substantive content from the original work, even if the proportion is low, as long as it exceeds reasonable limits.

(4) Step 4: Market Impact Assessment

Whether the usage behavior creates market competition with the original work, constitutes substantive substitution of the original work, or unreasonably infringes upon the legitimate rights and interests of rights holders [9]. If the derivative work serves to promote and publicize the original work without harming market interests, it may be deemed fair use; if it substitutes for viewing the original work and results in revenue loss to rights holders, fair use

shall be denied.

Typified reasonable use scenarios

(1) Fair use: For commentary and interpretation of the original work, citing a small number of non-core excerpts; for teaching and research purposes; non-commercial parody or parody; appropriate use in news reporting [3].

(2) Exclusion of fair use: complete reproduction of the original work, editing core plots to replace the original work; unauthorized commercial use of core segments; usage practices that impair the market value of the original work [9].

4.4 Distinguish Types of Infringement and Clarify Liability Characterization

Accurately classify infringement types based on the nature of secondary creation short videos:

(1) Infringement of reproduction rights: secondary creation short videos involving reproduction and redistribution, unauthorized extraction or splicing of original work fragments without new expression;

(2) Infringement of adaptation rights: Unauthorized rewriting, editing, or dubbing of the original work to create new expressions without obtaining authorization;

(3) Infringement of the right of communication through information networks: uploading infringing derivative short videos to the platform and making the works available to the public;

(4) Legitimate use: Secondary creative works that comply with fair use rules and obtain authorized licenses do not constitute infringement [13].

5. Platform Liability and Governance Approaches for Copyright Infringement in secondary creation short videos

5.1 Restructuring Attention Obligations and Liability Rules for Short Video Platforms

To transcend the limitations of the traditional "safe harbor principle" and align with the platform's business model, a tiered duty of care framework should be established [5]:

(1) Pre-implementation obligations: The platform deploys copyright filtering systems to enforce a "review-before-release" policy for highly sensitive materials such as films, television programs, and music, intercepting obviously infringing content; establishes a copyright whitelist to standardize the use of authorized materials [5].

(2) Obligations during operation: Strengthen

algorithmic recommendation control, conduct focused reviews on highly popular and widely shared derivative content, and implement the Red Flag Principle - when infringement facts are evident, platforms must proactively remove or take down content, and shall not be exempted from liability on grounds of undelivered notifications [11].

(3) Post-event obligations: Improve the complaint handling mechanism, promptly respond to notifications from rights holders, and provide authentic information of infringing users; Establish a disciplinary system for repeat infringing users, and implement the "three warnings" account suspension rule [5].

(4) Qualification of liability: If the platform fails to fulfill its duty of care and constitutes contributory infringement or instigation of infringement, it shall bear joint and several liability; if the platform actively pushes or edits infringing content, it constitutes direct infringement.

5.2 Establishing a Diversified Authorization Mechanism to Reduce Authorization Costs

(1) Establish a collective management system: By leveraging copyright collective management organizations, integrate copyrights of audiovisual works, music, and other works to provide "one-stop" licensing services, thereby simplifying authorization processes for derivative creators [9].

(2) Establish an official licensing platform: Led by industry associations, a short video content licensing trading platform shall be established to clarify licensing prices, usage scope, and revenue distribution, enabling convenient licensing [12].

(3) Introduction of the implied license system: For non-commercial secondary creation short videos with high conversion potential, implied licenses shall apply under fair use provisions, with rights holders compensated through post-creation revenue sharing [6].

(4) Promote the CC Knowledge Sharing License: Encourage rights holders to open certain rights, clarify the conditions and scope for derivative use, and provide clear guidance for creators [10].

5.3 Improve Rights Relief Mechanisms and Reduce Cost of Rights Protection

(1) Simplified evidence collection process: Leveraging blockchain and electronic evidence preservation technologies, real-time fixation of

infringing content is achieved to reduce evidence preservation costs [9].

(2) Inversion of the burden of proof: The platform bears the burden of proving the legality of infringing content and the authenticity of user information, thereby reducing the evidentiary burden on rights holders [13].

(3) Increase compensation standards: Introduce punitive damages to enhance compensation for malicious infringement and repeated infringement behaviors, thereby curbing the chaos of infringement [5].

(4) Diversified dispute resolution: Establish online mediation and arbitration mechanisms to promptly resolve minor infringement disputes and enhance the efficiency of rights protection.

5.4 Strengthen Collaborative Governance and Enhance Copyright Literacy

(1) Legal perspective: Clarify the infringement determination rules for derivative short videos through judicial interpretations, and refine provisions on fair use and platform liability [6].

(2) Industry-level measures: Establish self-regulatory guidelines for the short video industry to guide platforms and creators in complying with copyright regulations [1];

(3) Social level: Strengthen copyright education and publicity to enhance public awareness of copyright protection, fostering a favorable ecosystem that respects originality and standardizes creative practices [1].

6. Conclusion

Short video secondary creation short videos represent a vital form of cultural innovation in the digital era. The determination of copyright infringement in this context requires balancing multiple factors: protecting original creations, safeguarding creative freedom, and fostering industry development. Currently, China's copyright protection framework for derivative short videos faces challenges including inconsistent originality standards, ambiguous fair use boundaries, unclear platform responsibilities, and ineffective rights protection mechanisms. These issues stem from existing legislative and judicial regulations failing to align with the unique characteristics of short video production and dissemination patterns [1,6].

This study proposes that resolving the aforementioned challenges requires establishing a systematic infringement determination

framework: Originality should adopt the "independent completion + minimal creativity" standard with typified judicial interpretations [8]; Infringement determination should center on "access + substantial similarity," integrating abstract separation analysis with holistic perception evaluation [8]; Fair use principles should incorporate transformative use theory, combining three-step scrutiny methods with four-factor analysis to clarify qualitative and quantitative criteria [2,7]; Platform liability must transcend the safe harbor doctrine by implementing tiered duty of care and strengthening pre-transaction filtering with real-time monitoring [5]; Governance solutions should establish a tripartite system integrating licensing mechanisms, legal remedies, and collaborative governance to balance stakeholder interests [4,9].

The copyright regulation of short video secondary creation short videos must strike a balance: neither overprotecting original creations to stifle innovation nor tolerating infringement to undermine creative motivation. Only through unified judicial standards, enhanced legal frameworks, strengthened platform accountability, and streamlined licensing channels can we achieve dynamic equilibrium between copyright protection and cultural prosperity, thereby promoting the healthy and sustainable development of the short video industry within the framework of the rule of law [5].

This study still has certain limitations, as it did not delve into emerging issues such as AI-generated derivative short videos and cross-border derivative infringement. Future research could expand its scope by integrating technological advancements and legislative updates, thereby providing more targeted theoretical and practical support for copyright protection in the digital era.

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