

## Reform and Response: Legal Regulations on Violations of the Right to Disseminate Information Network

Doudou Liang

Law School, Shanxi University of Finance and Economics, Wucheng Road, Shanxi, China

[1426572768@qq.com](mailto:1426572768@qq.com)

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**Abstract:** The development of information technology and the transformation of new business operation models have led to infringements of the right of information network dissemination. The difference in infringement identification standards has caused the problem of inconsistent judgments, and the current legal system also has defects such as excessive application of the statutory compensation system. In a comprehensive comparison, the “substantial presentation standard” for infringement determination is more feasible. my country should introduce the statutory compensation analytic method on the basis of the existing legal regulations, and further improve the legal protection of the right of information network dissemination, in order to deal with the difficulties encountered in practice.

### 1. Introduction

At present, the new generation of network technology continues to innovate and make breakthroughs, and digitization, networking, and intelligence are developing in depth. The advancement of network technology has promoted profound changes in the field of information dissemination [1], As shown in the figure, in Jiangsu Province As an example, it has shown a trend of high growth for many years. Correspondingly, the complexity of the information network dissemination behavior that occurs in the Internet environment is becoming more and more prominent, and it has aroused people's continuous attention due to its increasingly serious harm. In the new “Copyright Law”, with regard to the right of information network communication, the wording of “work” is deleted, and the emphasis is on “available to the public”, in response to the current social situation of increasing infringements of information network communication. However, the new law does not clearly stipulate the criteria for determining the infringement of information network dissemination rights, and the existing legal system has some deficiencies in the regulation of infringements. Under the frequent changes in the operation mode of the network industry, infringers use forms to cover up the spread of substantive illegality, which increases the difficulty of identifying cases. At present, to effectively protect the right of information network communication, it is necessary to combine the characteristics of information network communication behavior in the Internet era and the facts of the case to comprehensively consider, and creatively introduce new standards to achieve effective legal regulation.

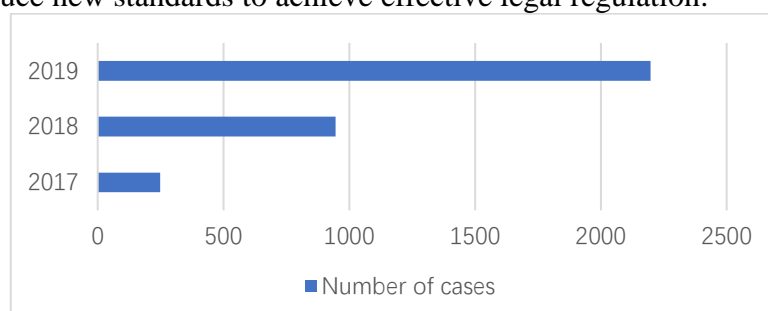


Fig.1 2017-2019 Jiangsu Courts Trial of Cases of Infringement of the Right to Spread Information

## **2. The Characteristics of the Infringement of the Right of Information Network Communication**

With the rapid development of network technology, behaviors that infringe on the right of information network communication have increased significantly. Compared with traditional infringements, under the network environment, such behaviors show some different characteristics based on the characteristics of the Internet.

### **2.1 Rejuvenation of Infringers**

The subjects engaged in such infringements are mainly those born in the 80s and 90s. They usually have specialized knowledge and are able to use complex technologies and equipment. As information network technology is favored by young people, their usage rate is relatively high. In the Internet environment, they are not only the recipients of information network dissemination works, but at the same time they may become the implementers of illegal information network dissemination activities, and it is easy to use the network platform to implement illegal acts.

### **2.2 Diversified Ways of Infringement**

The increasing progress of network technology and the continuous development of digital technology have made it possible for some people to use technology in more ways to commit infringements. In practice, some network service providers take advantage of the difficult-to-verify identity of network users and use virtual users and accounts to upload works to infringe their works; or encourage and induce network users to upload unauthorized uploads, which may infringe others' right to spread information on the Internet. Works; or use the aggregation platform, through deep linking technology, to actually present the copyright owner's work on the interface controlled by itself, which produces varying degrees of substitution effects on the linked website.

### **2.3 Severity of Infringement**

Due to the concealment of the infringement and the rapidity of the infringement process, once the infringing product is online, it will be browsed and downloaded tens of thousands of times in an instant, resulting in some works that cost a lot of capital and technical investment in the initial stage of creation. The reduction or even loss of market ownership makes it difficult to control the scope and extent of the infringement[2], causing immeasurable losses to the right holder and causing serious consequences for the infringement.

## **3. The Legal Regulation Dilemma of Infringement of the Right to Spread Information on the Internet**

The Copyright Law stipulates that the purpose of the information network communication right is to control the information network communication behavior. If the perpetrator provides works to the public in a certain way without permission, causing damage to the information network communication right of others, he shall bear the tort liability in accordance with the law. In practice, due to the hysteresis of legal regulations and the complexity of real life, existing legal regulations have defects in fact identification and law application.

### **3.1 Fact Determination: Controversy over the Criteria for Infringing on the Right of Information Network Dissemination**

At present, my country's existing legal system does not clearly stipulate the criteria for the definition of information network dissemination behaviors, which makes it easy for judges to trigger different judgments in the same case in judicial practice, especially for new types of infringement cases.

In practice, scholars have generated different disputes based on different theoretical viewpoints

on the infringement of information network transmission. Scholars who adhere to the “server standard” view believe that only the act of uploading a work to a server open to the public is a “network communication behavior controlled by the “information network communication right”[3], and whether the perpetrator stores the work on the server as the judgment information. The standard of online communication behavior is a common judgment point of view in current judicial practice, and its application is based on case. “User Perception Standard”, “Substantial Presentation Standard” and “Substantial Substitution Standard” are related to whether a deep link constitutes Infringement has gradually been discussed by the academic community. Among them, the “user perception standard” starts from the perspective of user experience and sets whether users can perceive the work provided by the chained website as the standard. The “substantial presentation standard” emphasizes that the chain creator Benefiting from the presentation of copyrighted content to the public makes the public focus on the webpage or client of the chain creator. This is not essentially different from the way the author uses his work to obtain benefits. It should be within the framework of the copyright law. Regulations.[4] Scholars who advocate “substantial substitution standards” believe that the damage caused by deep linking to copyright owners and the benefits to the perpetrators objectively play a role in providing works to users and produce substantial substitution effects.

### **3.2 Application of Law: Excessive Application of the Statutory Compensation System**

According to the provisions of the Copyright Law, the infringer’s liability mainly includes four forms: stopping the infringement, eliminating the impact, making an apology, and compensating for losses. In judicial practice, compensation for losses can compensate the right holder to a greater extent due to the nature of the property. Loss is widely used. At present, there are three ways to calculate compensation for infringement of information network dissemination rights. They are the calculation of the losses suffered by the right holder, the calculation of the infringer's benefits through the infringement, and the calculation of statutory compensation. The judge determines the amount according to the specific circumstances. In practice, due to the difficulty of proof for infringement losses and illegal gains, in most cases, the right holders request statutory compensation. However, due to the lack of uniform standards, there are certain problems in the application of statutory compensation. At the same time, affected by the level of economic development in the region, for similar infringement cases, the amount of compensation made by the judge in the ruling may vary.

## **4. Improving the Practice Dimension of the Regulation of Infringements in the Spread of Information Network.**

The problem is the orientation of practice. In response to the increasingly complex situation of infringement, the clear definition of information network dissemination and the appropriate supplement to the application of the statutory compensation system are not only the proper meaning of legal regulations, but also the needs of the times.

### **4.1 The Feasibility of Infringing on the “Substantial Presentation Standard” of the Right of Information Network Dissemination**

It is the basic function of legal interpretation activities to fully examine changes in social practice and interpret established rules in a targeted manner to apply to changing social facts.[5] The “server standard” from the perspective of article interpretation is widely used in legislation and judicial practice. It is undeniable that it has played an active role in balancing the interests of copyright owners, network service providers and the public. However, we should also realize that with the emergence of new infringement methods, the application of this standard can no longer solve the problems in reality. The “User Perception Standard” substitutes subjective feelings for the law's judgment of objective behavior. It is highly subjective and increases the burden of proof in judicial practice, which is inconsistent with the legislative purpose of the Copyright Law. The “substantial substitution standard” is an “upgraded version” of the “user perception standard”. Its path is to shift

from the user's subjective perception to examining whether the relevant behavior constitutes a substantive substitution effect on the work from the perspective of the work, although it is different from the “substantial presentation standard” There are certain similarities, but in real life, it also lacks operability. Therefore, in comparison, the “substantial presentation standard” is more feasible.

#### **4.1.1 The Rationality of “Substantial Presentation Standards”**

The “substantial presentation standard” advocates the information network communication behavior regulated by the provisions of the information network communication right, and can also include subsequent works display behaviors[6], and supports the identification of deep links as information network communication behaviors. If unauthorized, the website will actually present the works of others in its control page through deep links, so that the public can obtain the works at the time and place selected by the public without visiting the chained website. From the perspective of the balance of interests, it safeguards the interests of the right holders and punishes those who use deep links to infringe on the rights of others, which meets the actual needs of intensified infringements, meets the overall trend of strengthening the protection of intellectual property rights, and is conducive to giving full play to the regulatory role of the law. , Can effectively deal with the new infringement methods that will continue to appear in the future.

#### **4.1.2 Application of “Substantial Similarity” in Judicial Practice**

In specific judicial judgments, it is possible to expand the interpretation to provide a more adequate basis for the “substantial presentation standard [7]. “ “Substantial similarity” is measured from the number of used parts and the status of the substance in the work, and fully considers the influence of the original expression content of the work on the communication of the work, which is consistent with the viewpoint of the “substantial presentation standard”. Therefore, the application in judicial practice reflects the “substantial presentation standard” to a certain extent. For example, in the case of “Chen Biao and Shenzhen Liangbeisi Yangfa Co., Ltd. copyright ownership, infringement dispute”, the judge took “substantial similarity” as the basis for determining that the picture involved in the case was similar to the plaintiff's picture, and then believed that the defendant was online The publicity and promotion behavior constitutes an infringement of the right of information network dissemination.

#### **4.1.3 Limitations of the “Safe Haven” Principle**

The determination of infringement must consider the principle of balance of interests, and the development of the network industry needs to reduce the costs and risks of network service providers. It is undeniable that the “substantial presentation standard” emphasizes who actually presents and controls the work in the identification method, which increases the burden on the network service provider to a certain extent. In view of this, the law needs to be restricted. In the “Regulations on the Protection of the Right to Dissemination of Information Networks”, my country stipulates the principle of “safe haven” for the right of dissemination of information networks, and clearly stipulates the conditions under which network service providers can be exempted from liability, and establishes a “notice + deletion”. Dispute resolution procedures. The Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Disputes concerning the Infringement of Information Network Dissemination Rights stipulate the circumstances that information network service providers should know in the form of enumeration, and establish the “Notice and Necessary Measures” rules. It can be seen that the application of the “safe harbor” principle effectively restricts the “substantial presentation standard.”

#### **4.2 The Introduction of Statutory Compensation Analytic Hierarchy Process[8]**

In judicial practice, the uncertainty of legal regulations affects the authority of judicial work. At this stage, the statutory amount of compensation in my country is between 500 yuan and 5 million yuan, and the scope of compensation is relatively large, giving judicial personnel more discretion. Although the Supreme People's Court has determined the guiding principles of statutory

compensation by way of judicial interpretation, it lacks the quantitative application of the statutory compensation system.

In view of the infringement of the right of information network dissemination, the appropriate introduction of the statutory compensation level analysis method can effectively solve the current dilemma in the trial. Using the statutory compensation level analysis method, five levels are set for the amount and the degree of infringement of rights information and behavior information stipulated in the Copyright Law. The judge will conduct a comprehensive evaluation according to the pre-agreed weight coefficient during the trial. The amount of compensation is judged within the scope[9]. Quantitative analysis of the amount of compensation, judges exercise discretion within a reasonable range, can not only give full play to the compensatory function of statutory compensation, but also reflect a certain flexibility of judicial rulings. In the current situation of increasing disputes over the infringement of the right of information network dissemination of works , May well be a feasible method.

## 5. Conclusion

At this stage, although my country has legally protected the right of information network dissemination, it has not made a specific definition of the criteria for the identification of information network dissemination behavior. With the rapid development of network technology and the continuous emergence of new infringement models, this behavior needs to be clearly defined to promote the healthy development of network information governance. In the infringement regulation, the reasonable allocation of the amount of compensation is conducive to the establishment of a harmonious and stable market order and boosts the country's economic development and cultural prosperity.

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