

Thoughts on Criminal Law Protection of Network Copyright

Li Ming

Jiangxi University of Technology, 341000, China

Keywords: Internet; Copyright; Criminal Law Protection

Abstract: With the development of the network, various industries begin to pay attention to the construction of network, including monographs, dissertations and other works. Upon the openness of network, the network copyright followed by widespread concern. Compared with traditional copyright, protection of network copyright is more difficult, the infringement is more serious and the consequences are even worse. This also shows that civil and administrative regulations is not enough to solve the problem of network copyright, therefore, the protection system of network copyright must be integrated into the criminal law. This paper provides an analysis on the current network copyright protection deficiencies and specific criminal law protection countermeasures.

1. Introduction

The development of computer technology and network technology brings a tremendous changes to people's life, work and learning mode. People can not only acquire knowledge and information through the network, but also obtain corresponding economic benefits through the network works, therefore, the creation of network works has begun to enter a totally new stage of development. But it has also caused many copyright problems. In the case that civil and administrative means cannot be sanctioned and managed, the demand for criminal law protection has become increasingly high. And most countries begin to try to incorporate the content of network copyright protection in criminal law, but the research of network copyright protection in criminal law of our country is relatively late, and there are many shortcomings in the construction of legal provisions and systems, so it needs to be improved in the process of practice.

2. Problems in the Criminal Law Protection of Network Copyright

2.1 Narrow scope of protected objects

Judging from the current situation of the protection of network copyright in our criminal law, a narrow scope of protection still exists. On the object of protection, it can be divided into literary works, books, computer software, audio-visual products and art works, and other common types of works. However, with the development of science and technology, the types of current works are constantly updated, showing a diversified trend of development, such as game software, e-books, databases, etc, and these works will also bring economic benefits to the authors, but the copyright of these types of works has not been protected and paid attention to. Although it is involved in administrative law and civil law, there are still gaps in criminal law. At present, our country has begun to realize this problem, and issued relevant documents to strengthen the protection of intellectual property rights, and strengthen the study of new cultural industries such as animation games, databases and so on 1. And pay attention to the integration of the Internet, telecommunications network and radio and television network, timely discovery of new problems, strengthen the protection of copyright. But because it is often in the preliminary stage of research, many adequacies still exist.

2.2 Difficulties on the jurisdiction and evidence collection of network copyright.

With the popularization of network development, it has provided more space for the development of copyright, and the limitation of copyright has been expanding. This situation leads to the difficulty of copyright protection. The traditional judicial procedure is based on the

nationality, region and will of the parties, but these factors cannot meet the virtual characteristics of the network at present. The characteristics of the network make the management of physical space weakened, and it is impossible to divide the fixed area, residence and property². In addition, compared with the traditional copyright infringement, network copyright infringement has the characteristics of high technology content, easy to modify electronic evidence, difficult to preserve evidence and so on. The key problem in the investigation of copyright cases is to collect evidence, and the difficulty of preservation increases, which also dooms the road of copyright protection to be more arduous.

2.3 Insufficient awareness of criminal law protection of network copyright

The main reason for the infringement of copyright on the Internet is that the subject of the crime is in order to obtain illegal interests, and the unbridled behavior is closely related to the public's lack of awareness of the criminal law protection of copyright. Due to the lack of awareness of copyright protection, most of netizens lack awareness of paid use of online works, and lack respect for copyright in the process of uploading and downloading works. Especially after experimenting with the benefits of free use, more and more people begin to pay no attention to copyright issues. But for whatever reason, the huge market profit behind the copyright of the network attracts a large number of operators, who use illegal means to obtain benefits.

3. Suggestions on Criminal Law Protection of Network Copyright

3.1 Establishment of special legal provisions for the protection of network copyright in criminal law

Firstly, make clarification to the subjective elements of network copyright crime. Presently, the subjective elements in the protection of copyright criminal law in most countries are defined as “for profit”. Under this situation, the scope of criminal law management was narrowed. Especially in the network environment, many copyright infringements are not for profit, so it is necessary to modify the subjective elements of copyright protection in criminal law. At present, our country has removed the subjective elements for the purpose of making profits in the Copyright Law to achieve international conformity, but from the relevant regulations of the Criminal Law, no change has been made, resulting in a certain contradiction between the Criminal Law and the Copyright Law³. Therefore, the criminal law also needs to make appropriate amendments to this issue so as to ensure the unity between the copyright law and the criminal law; Secondly, expand the scope of copyright protection of network works in criminal law. With the advent of the Internet era, the types of works have undergone tremendous changes, and the number of works in the new situation even exceeds that of traditional works. The carriers of works also show a variety of development trends, including audio tapes, pictures and network digital technology forms. Therefore, it is also difficult to define the object of network copyright protection. It is necessary to expand the scope of copyright protection in criminal law, including digital publishing, animation games, database and so on. In order to guarantee the comprehensiveness of copyright protection, we can adopt the “Miscellaneous Provisions”, which can be decided by the judge in the process of confirming the scope of some new forms of works.

3.2 Improvement on the criminal prosecution mode of network copyright protection

The infringing copyright crime means the infringement of the author's legitimate copyright as well as the orderly management of guaranteeing the state's intellectual property rights. Therefore, in copyright infringement cases, most of them are in the form of private prosecution, and public prosecution is mainly a supplementary means. Whether to enter the litigation stage depends on the willingness of the copyright owner. Only when the consequences of the incident are very serious, some cases will be brought by the public prosecution organ, but also need to take the opinions of the copyright owner as the main reference. In the conviction of intellectual property infringement, a more scientific way should be defined as the crime of private prosecution, but from the perspective

of our formal procedural law, the crime of intellectual property infringement still belongs to the scope of litigation mechanism. Private prosecution embodies the rights of copyright owners, which provides guidance for the legal protection of copyright owners. Public prosecution is mainly applied in cases where copyright owners are unable or negligent in exercising their rights, thus realizing the protection of national intellectual property rights and providing a favorable environment for the creation of the network environment. Criminal law can make clear the way of prosecution of copyright. For general infringement without serious consequences, it needs to be dealt with by the copyright owner's prosecution, so that legislation and judicial interpretation are consistent, and gradually in line with international standards.

3.3 Drawing lessons from foreign experience and improving the criminal law protection system of network copyright

By analyzing the network copyright protection system, we can see that the criminal law legislation of network copyright in some countries has been relatively mature in this respect, which is worthy of our reference and learning. For example, in the reference of Anglo-American law system, we can formulate a model law for the protection of network copyright criminal law in the light of China's national conditions, and form a criminal law protection system of network copyright with socialist characteristics. For example, from the subjective element analysis, remove the restrictions that must be based on profit. As long as the infringer does not have the authorization of the copyright owner to use the work, it can constitute a crime. It has nothing to do with whether the infringer makes profit or not, so as to better adapt to the development environment of the network. In addition, we should pay attention to the publicity and popularization of copyright awareness, enhance the legal awareness of the masses, so that citizens can not only consciously abide by the law, but also actively participate in the supervision of copyright law, resist network piracy, and ensure that it is not downloaded or disseminated. At the same time, writers also need to enhance their awareness of rights protection. Once they find their rights and interests are infringed, they should immediately use legal weapons to safeguard their legitimate rights and interests and strengthen the norms of the network order.

4. Conclusion

In summary, the form of works has changed greatly under the network culture. The traditional civil and administrative legal provisions can no longer meet the needs of the protection of network copyright. Therefore, the improvement of relevant aspects of criminal law must be strengthened, the current problems of copyright protection in criminal law must be recognized, active measures must be taken and protection countermeasures must be adopted.

References

- [1] Su Wenyan. Research on Criminal Law Protection of Network Copyright [J]. Legal Exposition, 2019 (8): 204.
- [2] Guo Huanyun. Research on the predicament and optimization path of criminal law protection of copyright under the network culture environment [J]. Legal Exposition, 2019 (8): 64.
- [3] Cheng Ying, Meng Wenling. The Dilemma and Way Out of Copyright Criminal Law Protection in the Context of Network Culture: An Empirical Analysis of Copyright Crime Cases in Recent 10 Years [J]. Introduction to Theory, 2018 (11): 88-93.