

Analysis on the Protection and Restriction of Short Video Copyright in the New Copyright Law

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Abstract: The "Copyright Law" revised for the third time in 2020 stipulates the types of audiovisual works and the ownership rules of copyright, and adds principles and basic provisions that constitute Reasonable use, giving more protection space for short video copyright protection. However, the complexity of the relationship between short video creators, users, and platforms makes short videos still have room for discussion on the rational use of short videos and the applicability of the "notice-deletion" rule. Based on the new "Copyright Law", explore new solutions for short video copyright protection, clarify the relationship between short video copyright owners, disseminators and users, promote the technicalization of industry platform supervision capabilities, improve industry rules and standards, and prevent "notification-deletion" Abuse of principles is an effective way to protect the rights and interests of authors and promote the wide dissemination of short video works.

1. Introduction

At present, the development of short videos is rapid, but it is followed by the increase of short video infringement lawsuits. Most of the alleged infringements are the transfer of other people's short videos or the cutting of other people's videos, and some of them are in self-produced videos. Direct use of the copyright owner's work or secondary creation of other people's videos, etc. In response to the emerging problem of short video infringement incidents, on April 25, 2021, the State Council held a press conference. Yu Cike, director of the Copyright Administration Bureau of the Propaganda Department of the CPC Central Committee, responded to the infringement of Tiktok short video platform and clarified the focus of short video infringement management ^[1]. In the "Short Video Copyright Protection Forum" of the 8th China International Copyright Expo held on October 17, 2021, many scholars discussed short video copyright protection. During the period, Liu Zhengcao, director of rights and interests of Tencent, stated that according to the statistics of the 12426 Copyright Monitoring Center, from January 1, 2019 to May 6, 2021, the number of pirated short videos in the works on the National Copyright Administration's key early warning list (including film and television variety shows, etc.) reached 852,800. In terms of piracy of a single work, sports events have the largest amount of infringement on average, followed by TV dramas. This shows that strengthening the governance of short video infringement disputes has become an important issue that needs to be solved urgently for the healthy and sustainable development of the industry.

2. The production and copyright ownership of short video works

2.1. The new Copyright Law classifies short video works as audiovisual works

Tiktok, Kwai and other apps have driven the rapid development of the short video industry. As a mode of transmission of digital content, short video has been successfully integrated into the public life by virtue of its length of time, rich content and convenient browsing. Moreover, the user scale ranks first in the network copyright industry, and the user stickiness continues to increase. As one of

the most popular forms of entertainment, short video also faces some legal problems. Previously, there have been debates from all walks of life about whether short videos belong to the scope of current legal protection, such as: whether short videos belong to works, whether short videos should be classified as works similar to movies or video products, what is short video in the sense of copyright law, etc. . After the revision of the Copyright Law, the attributes of short videos were confirmed. The "work" stipulated in the new "Copyright Law" must meet five requirements: 1. Originality; 2. Expressed in a certain form; 3. Intellectual achievement; 4. It must be in the fields of literature, art, and science; form copy. Such provisions avoid the situation of arbitrarily interpreting, expanding, or narrowing the scope of works in judicial practice ^[2]. In particular, the stipulation of "representing in a certain form" breaks through the original limitation of "tangible form", making the works cover a wider range and have a strong forward-looking perspective. Compared with the old and new "Copyright Law", Article 3, the provision that "movie works and works created by methods similar to film production" are uniformly revised to "audio-visual works" has greatly increased the types of works and expanded their extension^[3]. The revision of the definition of works classifies short videos in the category of audiovisual works, which means that as long as short videos have originality, regardless of their originality, they are protected by copyright rather than neighboring rights. The new Copyright Law adapts to the challenges brought by social progress and provides a solution for copyright protection of short video works.

2.2. The copyright ownership of original short video works is clear, and mixed-cut works need to beware of infringement

The copyright of the original short video generally belongs to the creator, or to the legal person or unincorporated organization that presides over the creation and assumes responsibility, and enjoys the copyright of the short video formed by interpretation and compilation. The ownership of the copyright of the short video generated by the mixed cutting is more complicated and needs to be analyzed in the following situations:

First, the introductory short videos in the short videos are mixed. These short videos are mostly film and TV introduction and commentary. A typical example is "Gu Amo Talking About Movies". The copyright of this type of short video mostly belongs to the original film and TV producer. , there is a great possibility of infringement. Second, the entertainment short videos in the mixed-cut short videos are mostly short videos of ghosts and animals, and most of them contain originality, and the copyright belongs to the original creator. .Thirdly, the short videos of commentary in the mixed-cut short videos are mostly expressed as comments. If they are used for personal study, research and appreciation, they are considered Reasonable use. Generally, they are considered to not infringe the copyright of the original work. The copyright belongs to the creator; if it is uploaded to the information network platform for others to browse and download, it is likely to infringe. A typical example is "A Bloody Case Caused by a Mantou". In addition, considering the particularity of short video works, the new "Copyright Law" has also added the provision of "agreement by the parties". This is because some short videos are created mainly for personal learning and appreciation, and will only be used in the future. In the commercial field, the copyright ownership of such works should be judged according to the "contract".

3. The protection of short video works in the new "Copyright Law" has stimulated the enthusiasm for short video creation

The first is the copyright protection period of short video works. The third paragraph of Article 23 of the new Copyright Law stipulates that the protection period of the rights of audiovisual works is 50 years. Short video works are classified as audiovisual works, and the protection of short videos is the same as the protection term of film works and works created by similar films, which is conducive to encouraging the creative enthusiasm of short video creators; followed by the broadcast of short video works on radio and television stations, the forty-eighth of the new "Copyright Law" Article 5 stipulates that radio stations and TV stations to broadcast other people's audiovisual works should obtain the permission of the copyright owner of the audiovisual works and pay remuneration. This

provision protects the necessary economic rights and interests of the creators of short video works; In terms of amount, the new "Copyright Law" raises the upper limit of the compensation amount for infringement to 5 million yuan, breaking many previous debates about "the cost of rights protection is not proportional to the cost of litigation", which can inspire creators of short video works to maintain their own works.

All in all, the protection of short videos under the new "Copyright Law" is a breakthrough on the basis of tradition, which not only clarifies the moral and economic rights of short video creators in their creations and the public's right to obtain these creations, but also helps to promote short videos. innovation and the dissemination and application of works.

4. Correctly understand Reasonable use in the new Copyright Law to avoid infringement of short video works

4.1. Reasonable use analysis of short video creation under the new Copyright Law

In the process of using works, we need a balance, that is, while protecting intellectual property rights, there will be no monopoly of knowledge. "Reasonable use" is established under this social demand, and its goal is to coordinate creators' rights and interests. The protection of his works, the rights of users to obtain information, and the interests of the disseminators in using the works, promote the healthy development of the copyright cause. The new "Copyright Law" stipulates 12 cases of Reasonable use, short videos created based on the original film and television works to form new works (ie, short videos of secondary creation) and short videos formed by editing and splicing clips of the right holder's film and television works (ie mixed-cutting type). Among the short videos, the first and second items of Reasonable use are the most widely used, that is, for personal study, research or appreciation, using others' published works, and introducing, commenting on a work or explaining a problem is appropriate. Citing works created by others ^[4]. Once there is the possibility of reasonable use of such short videos, in many cases, there will be differences in the views between the short video producers, the short video providing platforms and the rights holders of related film and television works, and the consensus of all parties will be different. All kinds of "difficult and miscellaneous diseases" came out.

4.2. Reasonable use analysis of short video creation under the new Copyright Law

Whether a short video is a reasonable use requires a clear understanding and definition of the word "reasonable". Short video infringements are complex and diverse. Therefore, it is necessary to judge the following contents when making reasonable use:

First, whether the creation of short videos meets the requirements of "comment introduction" in reasonable use. In the production process of short video works of comment type, it is inevitable that all or part of the content of the original video will be displayed, and some will even conduct in-depth interpretation and targeted comments on the video. According to the new copyright law, such short video works of comment and criticism for the purpose of studying works are generally reasonable use and do not constitute infringement. However, such a simple judgment is obviously unreasonable. In the short video dispute case between Youku information technology (Beijing) Co. Ltd. and Shenzhen Shushu science and Technology Co. Ltd. the plaintiff (Youku information technology (Beijing) Co.Ltd.) found that the defendant (Shushu science and Technology Co. Ltd.) provided the continuous Atlas of the great military master Sima Yi's military alliance in the drama column developed and operated by it, It basically covers the main pictures and all the plots of the great military division Sima Yi's military division alliance, and an interpretation of the content is added below the video picture. In order to protect its legitimate rights and interests, Youku filed a lawsuit with the court. The court held that although the content cited by Shushu technology company changed the form of expression, there was no substantial change in the expression of the plot, which was beyond the scope of the terms of "comment introduction". For another example, Gu amo has adapted and reset films such as "Doraemon" and was sued by many copyright owners because of unreasonable explanations in the reset video, which made it spread in the open and circulating Internet space and

exceeded the limit of reasonable use. Therefore, when judging whether such short videos are reasonably used, it is also necessary to consider whether the interpretation of the original plot of the short videos has made a substantive breakthrough.

Second, whether the second creation of short video affects the normal use of the original video. A word can be derived here, that is, "substitution". If the short video created by the second time can replace the original video, enable the user to obtain the plot information in a short time, and affect the normal use of the original video, then this type of short video has the possibility of infringement. This type of infringement mostly occurs in "slicing" short videos. In order to meet the fragmentation time of users, the creators of content will cut a long video into shorter videos to meet the needs of users to obtain video information without watching the original video completely. Although the original short video is quoted for a short time, it can substantially replace the original work. This behavior undoubtedly affects the normal use of the original work. A typical example is the dispute between iqiyi and Huashu media. The defendant Huashu Media Co. Ltd. collated and edited the complete content of the film to form a short video for users to browse. After knowing the plot, many users reduced their interest in watching the original video and affected the rights and interests of the original work. Therefore, it is not within the scope of reasonable use.

Third, whether the second creation of short video infringes upon the legitimate rights and interests of the copyright owner. In many cases, when UGC users need to use the pictures of others' works, it is difficult to find an effective way to obtain the authorization of the obligee in a timely manner. Therefore, direct use without authorization is more common. From the perspective of the market, the secondary creation of some short videos has the effect of promoting the content of the video. Such short videos usually involve the main content of the original video by using the key images to stimulate the users' interest in further watching the film, which is similar to the preview of new books in the book publicity. However, such cutting of the core images of the original video may have a substitute effect and affect the rights of the original video creators. From the perspective of work value, the short video materials in this form are all from the original works, but are mechanically spliced on the original basis, without originality. There is also the possibility of affecting the expected market of the original video, which infringes the legitimate rights and interests of the copyright owner. Therefore, such videos are not suitable for reasonable use.

5. New scheme for copyright protection of short videos under the new Copyright Law

5.1. Clarify the relationship between short video copyright owners, disseminators and users

The new "Copyright Law" stipulates the copyright ownership of works. Therefore, when users create short videos, in addition to considering whether the short videos are original, they also need to consider whether the work conforms to the relevant laws of reasonable use in the "Copyright Law". It stipulates that infringement cannot be carried out under the guise of "reasonable use". When a user uploads a work to the platform, the video platform must fulfill the obligation of review. If the short video is found to be infringing, the short video platform only plays the role of a third-party platform. At this time, in addition to the user's direct infringement liability, it should also be based on The specific behavior of the short video platform to determine whether to bear the corresponding indirect infringement liability. Of course, if a short video platform directly provides short videos to the public without the permission of the short video copyright owner, it is generally liable for direct infringement. In addition to defining the copyright responsibilities of short video platforms and users, it is also necessary to clarify the relationship between short video copyright owners, disseminators and users. When disseminators and users use short video works as they are, they should obtain the authorization of the copyright owner unless there are restrictions or exceptions; In this case, it is necessary to judge whether it constitutes short video infringement according to different situations such as adaptation, plagiarism, reasonable use, and re-creation of borrowed ideas. Therefore, changing or plagiarizing other people's short video works without permission shall be liable for copyright infringement, while the secondary creation of short videos that conform to reasonable use does not constitute copyright infringement.

5.2. The technicalization of the supervision capability of the short video platform

Articles 49 and 51 of the new Copyright Law stipulate "technical measures" and "rights management information" for copyright protection, which fully reflects the importance of technology for copyright protection. Therefore, the platform should enhance its digital capabilities and establish a sound user management mechanism, including real-name system, step-by-step processing, blacklisting, etc., to resist infringing and pirated content. In content auditing, combined with intelligent auditing and manual judgment and filtering, pirate infringement can be quickly identified and the efficiency of short video infringement governance can be improved; in content monitoring, the infringement situation of each platform is regularly announced, and the infringing platform is urged to rectify the content to prevent personalized recommendation of pirated content. ; In copyright management, through blockchain technology, establish a copyright confirmation database, and authorize the circulation of copyright transactions, realize one-stop service, and establish a unified copyright authorization system. Taking People's Copyright as an example, it is an active attempt by People's Daily Online to protect copyright in the all-media era by combining blockchain technology. In the protection of short videos, it has established three core functional areas: video registration, original comparison and content review. Full-link video copyright services such as video registration and uploading, video monitoring, and video comparison.

5.3. Improve industry rules and standards to prevent abuse of the "notice-deletion" principle

In the early days of Internet development, due to the limitation of technical conditions, the network platform did not have sufficient ability to identify the content uploaded by users. The principle of "notice-deletion", that is, the principle of safe harbor, is reasonable as a legal means. When an infringing short video is found, the infringer will be notified to delete the short video. This standard can curb short video infringement to a certain extent and protect the legitimate rights and interests of short video creators. However, it may also lead to damage to the interests of users and platforms. The ultimate purpose of copyright protection is to stimulate copyright owners to create more high-quality content, and the "notice-deletion" principle may delete short videos that conform to fair use. It is not conducive to the resolution of short video disputes. In addition, video creators may need to spend a lot of manpower and financial resources to find the website agent who receives the infringement notice before sending the infringement notice to them. After the platform receives the notice, it will take a period of time to review. With the massive increase of short video content, the traditional "notice-deletion" has been unable to protect the legitimate rights and interests of rights holders, so a new rule has been proposed, namely the "notice-block" rule. This rule was first proposed by the United States, and its core content is that "although platform operators are not required to perform prior review obligations for copyright infringing content, they are required to increase their corresponding duty of care after receiving infringement notices, not only to perform specific infringing content. It should also adopt filtering technology to detect and prevent the same copyrighted work from being uploaded again."^[5] This not only greatly shortens the process, but also improves economic benefits, and has a strong reference for our country's short video copyright protection significance.

6. Conclusion

Practice has proved that the mainstay of safeguarding the rights and interests of original authors is the Copyright Law. Reasonably distinguishing the copyright protection and restrictions of short videos under the new Copyright Law, respecting the copyright and leaving a reasonable space for knowledge dissemination and re-creation, is the only way to create a good environment. The top priority of the copyright ecology of the short video industry. As Cong Lixian, a professor at East China University of Political Science and Law, said in the "Short Video Copyright Protection Forum" of the 8th China International Copyright Expo: "The value of copyright protection lies in the realization of the development and prosperity of the short video copyright industry. Neither is conducive to the realization of this value." Protecting copyright and culture is critical, but a balance

needs to be struck. In order to protect the rights of short videos, copyright owners and short video platform operators can also take some technical measures for short videos in accordance with the newly revised Copyright Law, and use technological progress as a carrier to further improve the protection level of short video works.

References

- [1] DAI Lijuan.Goodbye,the joy of"finishing a drama in five minutes"[J].Modern Advertising, 2021(09):43-45.
- [2] ZHANG Hongbo.Commentary on Copyright Law and Hotspot Cases[M].Zhejiang:Zhejiang University Press.2021.13.
- [3] NING Lizhi.Responding to the new format:the legal protection of short videos under the new"Copyright Law"[N].Chinese Journal of Social Sciences,2021-08-25(004).
- [4] ZHENG Weiming.Research on the"fair use"of short videos created by film critics[J].Communication and Copyright,2021(08):116-118.
- [5] ZHU Kaixin.From"Notice Removal Rules"to"Notice Blocking Rules"—Analysis of the Modernization Path of the"Safe Harbor System"of the Digital Millennium Copyright Law[J].Electronic Intellectual Property,2020(05):42-52.