

Original Paper

Research on Copyright Protection of Film and TV Series in the Era of Short Video Deluge in China

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Abstract

Film and television works refer to audio files with or without words and video files that can be recorded, which also enjoy copyright. In this era of short video fast food, movies and TV series have become the benchmark in the cultural field with their mature scripts, careful shooting and large investment of funds and personnel. The copyright protection of movies and TV series is the foundation for the long-term development of China's film and television industry, and has a great impact on the development of China's cultural industry. With film and television dramas becoming increasingly popular subjects for short-form video creation on the Internet, short-form video users and film and television drama creators have formed a fierce collision of rights. However, in practice, the copyright protection of film and television series is faced with such problems as high creation costs and low transport costs, high difficulty and high cost for platforms to identify infringing videos, and no clear standards for judicial identification of infringement issues. Therefore, based on the concept of the haven principle and the principle of proportion, this paper uses the method of empirical research to analyze the current situation of film and television play copyright protection in our country by combining the Copyright Law and the short video infringement case of the popular the film "Nagatsuko". Specifically, this includes legislation to clarify the limits and scope of judicial determination, refine the legal responsibilities of the three main parties, establish a legal risk prevention and control mechanism, and establish a benefit sharing mechanism between creators and short video users, thus promoting coordinated coexistence and win-win cooperation between users of short online videos and creators of TV dramas.

Keywords

Copyright, Short video, Infringement, Film and television works

1. Introduction

Nowadays, almost everyone is a short video user, shooting short videos has now become a profession, film and television dramas have become the main material to attract data traffic to short videos on the Internet. This kind of commentary short video process is simple but the traffic does not lose other subjects. It has become the first choice of many users. The “fetishism” has become an important means to attract data traffic.

The key to judging the infringement of short videos of film and TV drama narration lies in fair use, and the concepts of “fair use” and “originality” are not clearly defined in China’s Copyright Law, which has often aroused heated debates among many scholars, and these vague provisions also pose difficulties for the determination of infringement of short videos of narration. Due to the lack of legal clarity and the huge interests involved in the creation of film and TV dramas, dealing with the relationship between short commentary videos and the copyright of film and TV dramas has become a very important issue, but it is obvious that the regulation through China’s Copyright Law is a benign way to develop.

The related infringement phenomenon is getting more and more serious, which needs to be adjusted by law for copyright protection. China’s Copyright Law has been gradually adapted to China’s national conditions through three major revisions. China’s Copyright Law should further clarify the legal protection methods for the emerging thing of short video on the Internet, including both substantive law and procedural law, and this paper takes the infringement problem of film and TV dramas in the context of short video as a perspective, and starts the argument with the well-known movie “Changjin Lake”.

2. The Necessity of Copyright Protection in the Context of Short Video

2.1 Research Background and Related Overview

Copyright, a type of intellectual property, is an exclusive right, mainly referring to the right to use, sell and license literary, artistic and other works enjoyed by their creators, including both personal and property rights, such as the right to publish, the right to attribute, the right to rent, the right to exhibit, etc.

Network short video is the new era of data development of entertainment products, the author believes that the short video explosion behind the following three main features: Firstly, from the audiovisual point of view, popular music with short video playback is more eye-catching. Through the actual application of popular short video APP such as Jitterbug or Racer, we can find that by matching songs, it can better create a specific atmosphere and render the audience’s emotions. Secondly, from the perspective of interpretation analysis, the preposition of conflicting plots can better achieve the effect of attracting attention. The creators of short videos do not need to consider the completeness and restoration of the film and television works, but only need the plot clips to attract attention, which has achieved the purpose. Thirdly, from the perspective of communication analysis, algorithm recommendation is more understanding of audience needs. After a short video has been screened for

pornographic and violent content, it is presented to users in the system, and is usually recommended according to the playing time and hobbies of users. If the user finishes playing the video, the algorithm knows which tags the user likes.

2.2 Huge Interests Involved, Numerous Subjects, Copyright Protection Issues Need to be Solved

Comparing the cost of film and TV drama production with the cost of short-form video infringement, short-form video infringement has seriously infringed on the interests of the originator if the infringement is not curbed. Film and television drama production is generally long, costly and risky, and film and television drama shooting, publicity and other aspects also require large amounts of capital investment. However, short videos are less expensive to produce and have low compensation. So for a long time, there will always be an unbalanced pattern of interests, so that the infringement phenomenon is increasing. As the cost of safeguarding rights remains high, the conflict of rights becomes more and more obvious. Once infringement occurs, creators, platforms and users are all in different interest positions, and copyright protection needs to prevent it from happening.

As far as participants are concerned, “in the Internet era, everyone is an author and a user”, copyright and short video are closely related to everyone, and everyone may be involved in short video infringement cases. On the one hand, in order to realize their own ideal of life, the creators of films and TV dramas inject their efforts into the works; On the other hand, the works flow into the market, thus obtaining more economic benefits. There are countless users of short video platforms. Video will be widely disseminated by the public every day, with many subjects and huge interests involved. If copyright cannot be timely protected, creators’ rights advocacy will be frustrated, and the huge number of short video users will increase day by day, then social conflicts will be further stimulated and cultural construction will be hindered.

2.3 Short Video for Film and TV Drama “Second Creation” can Produce Greater Social Benefits

Copyright protection eliminates infringement disputes. The mutual assistance of short video and film and TV series will produce greater social benefits. First, the joint creation of short video and film and TV series can create greater economic benefits. For movies and TV series, the “second creation” of short videos plays a certain role in publicity, reigniting the heat of old movies and making the publicity of new movies omnipresent. Short videos can take advantage of the fragmented time of the audience, attract people’s attention when they are waiting for the bus or chatting, create more traffic, and develop the Internet economy. Second, the “second innovation” can produce positive cultural benefits under the authorization and permission. The “second innovation” of short videos and films and TV series can promote the dissemination of excellent cultural works and flourish the creation of works. Using within the boundaries of legality, copyright protection takes a new direction. Reasonable copyright protection is a win-win-win for platforms, creators and users. Some excellent films and TV plays are promoted with their excellent spirits of patriotism, patriotism, positivity, diligence and simplicity, etc. The dissemination of films and TV plays is conducive to creating a good social atmosphere in a way popular with the masses, promoting the establishment of cultural undertakings and enriching people’s spiritual needs.

3. Analysis of Copyright Protection Problems and Causes of Film and Television Drama under the Background of Short Video

3.1 Inadequate Provisions of China Copyright Law

The difficulty of copyright protection mainly lies in whether the work belongs to the author's original work and whether it belongs to the object of copyright protection. The legal limit of identifying the originality of the work is unclear. In the typical cases of short video infringement protection, whether it is an original work is often the focus of litigation. In the case of "Douyin Short Video v. Group Shooting Short video" decided by the People's Court of China, the originality of the short video "I want to say to you" aroused heated discussion. The lawsuit judgment pointed out that the short video constituted an organic unified audio-visual whole and reflected the personalized expression of the producer. So how should we identify the originality of the work? In the short video of film and television drama interpretation, the definition of the work has been in the stage of ambiguity. Some scholars divide short videos into short videos that can constitute works and short videos that do not. The Copyright Law of China has revised the definition of a work, and the new Copyright Law of China has also revised the original "film works and works created by a similar method of film production" to "audio-visual works". In a large environment, many infringement disputes of short video explanations of movies and TV series are due to the current vague legal provisions. For example, in the case of iQiyi and Wasu Media, both sides debated whether short video is original and belongs to the object of copyright protection.

3.2 High Cost for Creators to Defend Their Rights, Low Cost for Movers to Infringe

The cost difference between film and television creators and short video carriers is huge. On the one hand, film and television works take a long time and cost a lot of money. The mode for long videos is to make or buy the copyright. The model of short video is user upload, which fundamentally determines the difference in the cost of content. In practice, creators don't want to go to court with short video companies because of the high cost of litigation for short video infringement. On the one hand, when long video users claim infringement of short video, they need to bear the responsibility of evidence collection, such as notarization, which has increased the cost of litigation. The court expects notarization to be played continuously for every second of a short video. In this case, the cost of obtaining evidence will rise and the right holder will bear the hidden cost. On the other hand, there are a large number of users of short videos. For a movie or TV series, there are often hundreds of people editing and transporting, which makes it difficult to defend rights. It is just like whack-a-mole. Short video users will always have a lucky mind, with synonyms, synonyms, pinyin naming methods indirectly editing movies and TV plays.

Last but not least, in terms of the production cost of short videos, movers can edit videos individually or in a team, so as to achieve the process of attracting data traffic and creating income. Without the authorization of iQiyi, Tencent and other long video platforms, they use the content of long video and share the spoils of the long video platforms. The infringement of short video is becoming more and

more fierce. From the perspective of infringement cost of short video, if it is found that short video users carry videos, the application of “safe haven principle” makes the cost borne by the infringer relatively low. Infringers only need to delete in time and will not be further investigated, which makes the current infringement phenomenon difficult to curb.

3.3 Platform Identification Is Difficult and the Workload is Costly

First of all, by understanding the function principle of short video algorithm recommendation technology, we can know that short video platform work screening pirated movies and TV series short videos cannot easily be realized by algorithm recommendation technology. “Algorithmic filtering,” or screening, is the first step in this process, with the aim of filtering out pornography and violence. After that, as far as the whole system logic is concerned, the first layer is algorithm review, the second layer is similarity calculation, the third layer is feedback collection, and the last layer is manual review. There is no difference in the understanding ability of the algorithm recommendation system. An identical movie or TV show with the same content but a different name cannot be identified by the algorithm.

Filtering short videos of pirated movies and TV works requires high auditing costs, and filtering is a higher-order word meaning, which requires a certain level of understanding and cannot be implemented in a large-scale recommendation system. For example, when we need to filter out pirated videos of movies and TV series on Douyin, we need to make a special annotation for all these videos, which requires a team of 30 people to work for a month. After the annotation is completed, classification training should be carried out, which is different from recommendation algorithm and is a special algorithm in machine learning. After long training, it may reach 80 or 90 percent accuracy, but it is still inappropriate to put it on the line, because the whole reasoning process is very slow. Liu Wenjie, a professor at the Institute of Comparative Law of China University of Political Science and Law, said in the topic sharing Algorithm recommendation and Copyright Reasonable Duty of Care that accurate algorithm recommendation technology may not be able to develop a good content filtering algorithm.

4. The Legal Determination and Principle of Short Video Infringement of Film and Television Series

4.1 Legal Determination

The judicial focus on the fair use of copyright mainly includes the following three aspects: whether it is appropriate to cite; Whether it affects the normal use of the work; Whether it unreasonably damages the legitimate interests of copyright owners. It is from these three aspects that the infringement of short video commentary of film and television series is judged.

First of all, “To introduce, comment on, or illustrate a work” is the first requirement for considering necessity. The author believes that most short videos of movies and TV plays, accompanied by original videos of movies and TV plays, do not meet the requirements of necessity. They are not for the purpose of introducing, commenting on a certain work or explaining problems, and are not unique.

Secondly, most short video clips of film and television commentary quoting original films and television dramas often exceed the standards of appropriateness. Many short videos tend to crop a complete storyline in order to draw traffic, almost all of which are positive clips, or as up and down episodes in a continuous manner. Excessive insertion of film and television drama clips, the original film occupies a high proportion. The traffic of these short videos gained heat precisely because of the insertion of the original sound of the film and drama. There are multiple reasons for the current problems with the application of fair use in the short video space. For example, at present, many publishers of short videos of Chinese films and dramas do not aim to really analyze and interpret them, but to absorb fans in the name of interpretation and thus make profits. When determining whether a short video meets the appropriateness requirement, the court should evaluate various aspects such as the duration of the original film or TV drama reference and the essence of the video.

Thirdly, the short video commentary of film and television drama affects the normal use of film works. Now some short videos can almost replace the original movie and TV series. For viewers, the video title and copy are enough to let the audience watch the movie in advance. Some short videos have been made to summarize the content of the film, revealing the plot in advance. Viewers don't need to watch the full film to know what's going on. Many audiences realize their needs of watching movies on short video platforms in their spare time. After knowing the general plot, they often don't choose to go to the cinema or watch it on a long video platform. This substitution of original films and TV series has greatly violated the copyright of the creators.

Fourthly, the short video of movie and TV commentary infringes on the legitimate rights and interests of the original authors. The process of marketing film and television works is actually the process of copyright trading. Only by realizing the value of the copyright property right of the film works through trading, can the production enterprises recover themselves and obtain profits, so as to expand and grow again. This is also the basis for the existence and development of film and television works. However, with the rise of short video platforms, some commentary videos let the upcoming films reveal the plot in advance, and reduce the viewing rate and popularity of finished films and TV dramas, which has greatly violated the legitimate rights and interests of the original authors.

4.2 The Safe Haven Principle

The haven rule is the core content of tort liability, which is almost the defense principle of many accused subjects. As far as the short video itself is concerned, the safe harbor principle becomes the guideline of regulating the copyright of short video. The basic intention of the establishment of "safe haven principle" is mainly the following two aspects: First, to establish an incentive mechanism to encourage the network service providers to cooperate closely with the right holders, so as to effectively stop the spread of network infringements. Secondly, clarify the possible copyright infringement liability of Internet service providers. ISPs can operate and develop the network information industry normally under the condition of accurately predicting legal risks. The primary purpose of the prescribed notice-and-remove process is to encourage ISPs to expand aggressively into new markets without fear

of copyright liability, so as to improve the efficiency, quality and scope of the network.

Of course, the safe haven principle has three preconditions. First, it does not know or should not know that the work infringes, and second, it does not benefit financially from the infringing work. Third, delete the content in time after receiving the notice of the right holder. The first premise is good faith, if the torts subjectively do not know or should not know, then should be exempt from tort liability. If the subject of infringement is subjectively malicious or fails to fulfill the duty of care, and there is evidence to support it, it should bear the corresponding civil liability. Summary of the current improper practices on the network platform, mainly some users “acquiesce in the use, wait for the notice”, “let the bullets fly, delay tactics” and so on in the small video to play the edge ball to get traffic, need to harbor principle really put into practice.

4.3 Principle of Proportionality

In the case of damage compensation for infringement of short video, the principle of proportionality should be carried out to weigh the value of damage facts. The copyright protection system always faces the problem of seeking a balance between corporate or personal interests and public interests. “Fair use”, “statutory license” and “safe haven principle” are adopted to make room for individual use of film and TV series copyright. However, due to various conflicts between film and TV series and short videos, the principle of proportionality is still needed to be adjusted. On the one hand, copyright protection should have boundary limits, and excessive protection is not conducive to stimulating market vitality, mainly because excessive protection will cause the right holder to raise the unit price to short-term marginal cost, so that the creator seems to have been fully protected. But at the marginal cost point, where supply and demand are balanced, economic benefits are static. At the same time, excessive copyright protection will reduce the “public information” that can be shared between ordinary citizens and creative groups, and harm the public interests of society. On the other hand, the rights holder’s loss, the infringer’s subjective intention, the spread degree of the infringing video and the social impact should be considered comprehensively when protecting the rights of the right holder. The principle of proportion should be carried out in the pattern of high cost of rights protection for the creator and low cost of infringement for the transporter, and the value of the rights and interests to be protected and the loss caused by infringement should be balanced.

5. The Path Selection of Film and TV Drama Copyright Protection under the Background of Short Video

5.1 Legislation to Clarify the Limits and Scope of Judicial Determination

It quantifies the limits and scope of reasonable use. There is a need for further clarity in the law on the necessity and appropriateness of the use of works. At present, Chinese television programs in the report or research of film and television drama also involves a large number of original fragments, and even reveals the main plot, such as the scope of reasonable application? Is it reasonable and applicable for short commentary videos of movies and TV dramas to disclose the plot in advance and “reveal the

plot”? Does it belong to the tort standard to use the plot to disclose the story substantively or the length of the quote? How much time is beyond fair use? These issues require further legal clarity. These issues require further legal clarity.

The author believes that after quantifying the fair use, the law needs to take measures to protect the substantive rights. The law may stipulate that a certain amount of compensation should be paid to the copyright owner for exceeding the fair use, and formulate detailed compensation standards. “Actual loss”, “illegal income”, “royalty” and “legal compensation” are the four ways of copyright damage compensation. Considering the high cost of rights protection, film and television creation and notarization, the author believes that “legal compensation” is the most reasonable method, which is not only more efficient, but also can minimize losses. Moreover, based on the relevant laws and regulations of our country, we should improve the mental compensation of the copyright owners for the infringement of copyright.

5.2 Legislative Elaboration of the Legal Responsibilities of the Three Parties

Short videos involve creators, audiences and short video platforms. In terms of prevention and control, we can take measures from the following three aspects. Firstly, the audience is not only the consumers of film works, but also the viewers of short videos. Therefore, the primary way of copyright protection is to actively guide the audience, establish copyright awareness, refuse to watch pirated videos, and advocate the audience to watch the full version on long video platforms or cinemas. Second, short video platform should play the role of “goalkeeper”. For these short videos, we can increase the auditing efforts and optimize the auditing standards. Short video users become auditors, the audit will be placed in the civil society, so that the audience in the brush short video to meet their entertainment needs, but also to help reduce the difficulty of short video manual audit. Users can adopt the real name registration system, ID card real name registration system, convenient later accountability and supervision. When signing user agreements with users, short video platforms shall also clearly inform users that infringement of others’ copyright is prohibited, and explain the consequences of infringement. Third, for creators, faced with the current situation of high cost of rights protection and many infringement objects, the right holder can directly Sue the infringing user and list the user as the third party, which often increases the winning rate. For example, in the case of Baidu v. Youku Video, Baidu sued Youku platform at the beginning and all of them lost. In litigation, according to the network user information listed by Youku to Sue users, and later won the lawsuit.

5.3 Establish a Benefit Sharing Mechanism between Creators and Short Video Users

When it comes to the infringement of short videos, each subject has its own difficulties. Film and TV drama creators can achieve win-win cooperation with the platforms. On the one hand, producers of movies and TV series can register official short video accounts to guide audiences to watch movies. Now, when a new movie or TV series is broadcast, the official website often uses the registration of Douyin account, Weibo account and other ways to promote the new series. For example, during the 2019 summer vacation, 14 movies and TV series officially opened accounts on the short video platform.

In just a few months, “Order of Love” has attracted more than 60 million likes, and the TV series “My Love” has attracted more than 2 million followers with just 30 short videos. Using official accounts to announce works can be said to kill two birds with one stone, which not only becomes an important means for official accounts to protect the copyright of TV dramas, but also can absorb traffic and generate income by using short videos.

On the other hand, users are encouraged to create and perform activities under the authorization of film and TV series creators, and copyright owners are advocated to authorize, so as to achieve win-win results for both parties. “Encouraging authorized entrepreneurship and innovation” has become the trend of The Times, and various kinds of cooperation have naturally begun to accelerate. Some short video users have video editing skills. Film and TV drama creators do not need to spend their own resources for publicity. They can achieve the purpose of publicity by authorizing short video users. Users’ creations should not be killed in the name of copyright protection. Many users make short video creation as a career, and they are familiar with how to make clips more attractive to viewers and how to make captions eye-catching. For example, iQiyi, Tencent Video, Youku video and other platforms have been trying such a model, from the previous one second resistance, to now allow users to create content in 90 seconds.

6. Conclusion

Short video at the forefront of The Times is a new product that people are happy to see. With the increasing number of registered users and page views, it has become one of the major driving forces for the development of the Internet economy. Films and TV dramas also shine in the cultural field with their elaborate production, capital investment, long-term shooting and other characteristics. However, movies and TV series, as products of enriching people’s spiritual world, have been gradually pushed out of the market by numerous infringing short videos, just like “bad money drives out good money”. For short commentary videos, movies and TV series are its “source of living water”. Only when movies and TV series are created, such short videos will exist. If the copyright protection of movies and TV plays is difficult, there will not only be no theme for commentary short videos, but also affect our cultural and economic development.

Film and TV drama interpretation as a creative head, the infringement problem is very prominent. The adoption of short commentary videos is becoming more and more popular. Faced with high creation costs, high rights protection costs, many infringement subjects, many short video users, and weak copyright awareness, rights protection is comparable to “whack-a-mole”. If not regulated, short videos will gradually reduce the creative enthusiasm of creators, lower the box office, damage the revenue of film and long video industry, and take away the cake of film and TV drama creators. In the long run, both sides will lose.

Law should attack the chaos of short video. In order to achieve more effective copyright protection, on the one hand, the substantive law should clearly stipulate the legal provisions, adjust the emerging field

of short network videos, and quantify the limits and scope of fair use. On the other hand, the procedural law should solve the problem of difficulty and high cost of safeguarding rights. Both are indispensable. At the same time, for film and TV drama infringement, it is more rational for creators to strive for win-win cooperation with short video platforms, which is the biggest difference from solving other infringement problems. Looking forward to more specific regulations on short videos in the future. Form a unified opinion, creators and video platforms to work together to help the construction of cultural power, to achieve a significant take-off of the Internet economy.

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