

Judgment of Short Video Originality and Exploration of Its Protection Path under Copyright Law

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Abstract: The development of short videos has become one area that is more affected by plagiarism. with the determination of the originality of short videos, which is subject to a certain degree, confusion about identifying short video infringement still exists. One of the crucial issues facing the current technological era is how to solve the phenomenon of repeated infringement of short video copyrights and regulate the development of the short video industry. This article will expound on two aspects: the determination of the originality of short videos and the exploration methods of copyright law for short video protection paths, aiming to provide some ideas and suggestions for solving the short video infringement chaos and regulating the development of the short video industry.

Keywords: Short Video Works; Originality; Copyright Performer's Rights; Audiovisual Works; Copyright Protection; New Copyright Law

1. Introduction

The "Research Report on China's Short Video Industry" limits the length of short videos to five minutes and seconds and proposes that short videos are "a type of video content that is "watched within five minutes and mainly spread through PCs and mobile phones." With the development of technology and the wide application of mobile terminals, short videos have gradually gained popularity on major websites due to their advantages, such as less difficulty in production, less recording time, clear themes, good sociality and interactivity, and easy distribution. They are sought after by fans and the capital. It has become one of the mainstream directions of new media communication today. After eight years of development, today's short-sighted industry has reached the climax of commercial development.

2. Determination of Originality of Short Videos

One type of short video infringement is the unauthorized use of other people's short videos to make commercial advertisements and circulate on the Internet without the copyright owner's approval.

The second form is to edit and organize pictures of film and television works and pictures uploaded by netizens without the copyright owner's permission.

The third form is to use other people's music and literary achievements in short videos without the copyright owner's permission.

The fourth situation is to modify this type of novel into a short video without the copyright owner's permission.

The definition of "work" in Paragraph 2 of China's "Regulations for the Implementation of the Copyright Law" is: "Creative achievements in China's Copyright Law refer to those that are original in the fields of culture, art or science and technology, and can be used in a specific tangible form. Ways to reproduce scientific and technological achievements.

That is to say, if a short video wants to constitute a work in the sense of copyright law, the core element of judgment is originality. The originality of a short video determines whether it can be protected by copyright law. Because short video has the advantages of short video length, clear theme, robust interactivity, and simple production when judging whether it is original, the balance between copyright and public interest should be fully considered. On the one hand, the short video must be created themselves and must not copy the works of others. On the other hand, short videos should be the author's creative intellectual output and the expression of thought or emotional content and should not copy the creativity of others.

2.1 In terms of video content

Material selection is the first step in short video production. It includes what kind of background to choose, what kind of background sound to choose, what kind of natural material to choose as a creative prototype, and so on. The creator will select, extract and analyze the material according to the ideological core they want to express and then unify the various material elements for artistic arrangement through various editing methods. This is the initial stage of the short video. No matter what kind of short video content is, creators should choose from basic materials and initially arrange the materials, so the originality of material selection is more fundamental to the judgment of the originality of short video creation. Therefore, the more comprehensive the range of material selection, the higher the degree of originality in its selection and use, and vice versa.

2.2 Problems with pre-shooting

Short video production can be divided into shooting and computer production. Short videos that meet the requirements of the copyright law or the originality of works created by similar shooting technology are included in the reserved category of film and television works of art. Short videos that do not meet the requirements for the originality of film and television works of art but are entirely original can be recognized as video products and protected. In addition, the shooting angle and means are also essential reflections of the photographer's style. Even if the material is the same, if the shooting angle and method are different, the viewer's visual experience will be different, and the final effect will naturally be completely different. The audience will not put these two works with different styles in the same place, so such two works can also receive the protection of copyright law because of their originality.

3. Exploration of the protection path of short videos under the copyright law

3.1 Existing short video legal protection system

For short videos that are original and can be preserved as audio-visual works, judicial relief can be claimed when they are violated. Its power market mainly includes copyright owners and network platform operators who use the agreement method between terminals and customers to obtain licenses. Since it is an audio-visual artwork, its copyright owner is the subject of the power market. It can exercise the four personal rights, and 12 specific personal and property rights stipulated in Article 10 of the Copyright Simultaneous Law. The prerequisite for the copyright owner to publish short videos on the short video operating network platform is to sign an end-user contract with the network platform operator. End-User License Agreements (EULA for short) refer to the terms and conditions when software developers or publishers authorize network users to use specific software products. End-user terms are also essential for establishing the legal relationship between short-term network platform operators and ordinary Internet users. Short-video platform operators generally add legal provisions on authorized use to end-user terms.

3.2 Suggestions for Short Video Copyright Protection

3.2.1 Foreign short video copyright protection system

The video platform headed by YOUTUBE first upgraded its software technology. It developed a new content recognition system: users can share the video transmitted by the platform and automatically proofread it with its vast database, and even simple stitching or short copying will be detected. At the same time, they can also deal with the infringing videos more detailedly according to the original copyright owner's requirements for the infringing video. Even if the platform side obtains the copyright owner's permission, the infringing content can be blocked entirely, or only a specific content scope can be blocked. At the same time, the United States has also adopted the rules of "pattern licensing" and "estoppel" in the issue of online copyright. The video platform can use the "prior authorization" model with the copyright owner so that users can use it directly per the previous license agreement. It saves time and economic costs to a large extent, reduces copyright conflicts, and achieves a win-win situation for the copyright owner, the platform, and the user.

3.2.2 Improve the domestic short video copyright legal protection system

3.2.2.1 Improve technical level and strengthen post-event supervision

As the primary propaganda carrier of the short video, the short video platform should develop new technologies but clarify the

terms of rights and obligations between the platform and users. Because the short video platform is the first party responsible for infringement monitoring, it is recommended to learn from similar measures of YOUTUBE to improve the audit efficiency and quality and develop related new technologies. The current short video platform mainly solves the infringement problem with its own rules and censorship system. However, if it is not easy to report or the short video's popularity is low, the infringing work will be challenging to see. At the same time, many platforms will consider the infringing videos for their benefit. They will not deal with the infringing videos, damaging the rights and interests of the copyright owners. Therefore, as the main responsible person, the short video system needs to strengthen technology development, improve the supervision and evaluation system, combine manual review with machine inspection, and combine platform review with user self-inspection to promote the sound development of segment video business.

3.2.2.2 Clarify the rights registration agency and explore the mode of proof

Since short-sightedness is an emerging industry, the copyright identification and filing business objects carried out by China's copyright protection agencies are all aimed at video platforms and media. Due to the lack of predetermined knowledge of copyright laws and regulations, ordinary users lack a quick video copyright identification system. Therefore, establishing a similar short video rights protection registration is one of the protection measures for maintaining short video copyright. This method can not only protect the creator but also provide more transparent and more powerful evidence in the trial of the judge. At the same time, the country should also strengthen its efforts to popularize the law so that copyright awareness can be deeply rooted in the people's hearts, enhance users' and legal awareness, and reduce the probability of infringement. The platform can also remind users of legal knowledge related to infringement when uploading videos to reduce the occurrence of infringement and improve the legal awareness of the public.

3.2.2.3 Strengthen government supervision and guide industry self-discipline

Although short videos have exploded, there is still no independent, specialized, and effective government department in China to guide and manage the short video market. With the rapid development of China's online short video business, the existing copyright law has a certain lag and cannot keep up with the speed of market development. Therefore, the supervision of short video copyright not only needs to improve the relevant laws but also requires the government to establish relevant departments to standardize the management of short videos, guide the short video market with macro-control means, and let them spontaneously abide in order to protect the enthusiasm of the creators to create and promote the healthy and positive development of the short video industry.

4. Conclusion

The reason for the occurrence of short video infringement chaos is frequent. It is also a necessary process for developing short videos as a new thing in the Internet era. The development of any new thing is bound to go through the process of "barbaric growth" to "orderly."

For the healthy development of the short video industry, we should stand in the perspective of cultural communication, adopt an open and inclusive mentality, first confirm its legal status legally, and balance the interests of all parties. Then, stand on the two paths of "prevention beforehand and standardization after the fact" to provide support and protection for short videos, and guide the short video industry to legalize, rationalize, and improve quality, get rid of the shackles of "infringement," and thrive in the sun.certainty [J]. *Acta Automatica Sinica*, 2023, 49(4): 790-804.

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