

Discussion on the Legal Boundary of "Second Creation" Video

-- Taking the Example of Whether the Second Editing of Satellite TV Variety Show Infringes the Copyright of the Original Video

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Abstract: At present, China's "second creation" short video market is hot, but there is a lack of mature management mechanism, and the copyright problem is prominent. The article utilizes the literature method and combines the provisions of the new Copyright Law to explore the infringement characteristics and infringement boundaries of "second creation" short videos. The study finds that the infringement of "second creation" short videos has the characteristics of citing works without attribution, making profits without authorization from the copyright holder, and citing other people's works in an inappropriate proportion, etc. The boundaries between the infringement and piracy lie in the question of whether they are original or not, and whether they make reasonable use of other works. Clarifying the infringement boundary of "second creation" short videos and analyzing their infringing features will help to better distinguish whether "second creation" is infringing, and to find out the position of "second creation" in the audiovisual development, so as to maintain a favorable environment for original production.

Keywords: Second Creation Video; Dissemination Infringement; Copyright; Fair Use.

1. Introduction

According to the 49th Statistical Report on Internet Development in China released by China Internet Network Information Center (CNNIC), as of December 2021, the user scale of short video was 9.34 billion, and the active penetration rate of the industry was steadily increasing. The huge economic benefits have boosted the public's enthusiasm for participating in short videos, and the high risk of infringement of "second creation" short videos has made it urgent to regulate and govern the infringement of "second creation" short videos.[1]

Regarding the definition of infringement of "second creation" short videos, Article 16 of the new Copyright Law stipulates that when using existing film and television works for the purpose of publication and production of sound and video recordings, the copyright owner's permission should be obtained and payment should be made. Secondary creation without the permission of the copyright owner, without a defense, constitutes infringement. Article 24 of the Copyright Law stipulates that, within the limits of fair use, "second creation" short videos can use their film and television works for creation without the consent of the copyright owner, and if the purpose of the short video dissemination involves bringing economic benefits to the media or platform, then the use of the published film and television works should obtain the authorization of the original copyright owner.

At the same time, "second creation" should not be a simple castration of the original. If the "second creation" short video pays attention to the proportion of original works quoted, and incorporates original copy, voice-over, new ideas, etc., it forms a new audio-visual work, which becomes the object of protection under the Copyright Law, and the author and name of the quoted work should be indicated when it is disseminated, and if it is for profit-making purpose. In the

case of "second creation" short videos, permission should be obtained from the copyright holder of the original work before dissemination.[2]

This paper adopts the research method of practical cases and literature analysis to analyze the infringement problem of users' "second creation" short videos in the era of new media, which also puts forward new requirements and challenges for national governance and the formulation and improvement of relevant laws and regulations. Therefore, the scope of application of "fair use" should be scientifically regulated in light of the actual situation in the field of "second creation" short videos in China.

From the above analysis, it is clear that the copyright protection of audiovisual works is a long way to go. People need to establish an efficient identification procedure to draw a clear line between "second creation" and piracy by setting standards on whether the nature of dissemination is for profit, whether authorization has been obtained from the copyright holder, whether the proportion of quoting from the original work is reasonable, and whether the work is original or not. Protecting copyright is a top priority. Protecting copyright means protecting innovation and the enthusiasm of the original creators, which is the fundamental driving force for the development of a virtuous cycle in the audiovisual industry.

2. Legal Boundary of Second Creation Video

2.1. Concept of Second Creation Video

The definition of "second creation" video is mainly embodied in two aspects: first, when quoting a certain proportion of the original and incorporating the creator's own ideas, texts, subtitles, music, opinions and other elements, it becomes a new audiovisual work in the sense of the law and

an object under legal protection; second, when dealing with the relationship with the original copyright owner, whether to specify the name and the author of the original work in the dissemination process, and whether to specify the name and the author of the original work in the dissemination process, and whether to specify the name and the author of the original work in the dissemination process. The second is whether, in dealing with the relationship with the original copyright owner, the name and author of the work are indicated in the dissemination process, and whether, under the premise of having the purpose of making profit, the permission of the original copyright owner is obtained before dissemination.[3]

3. Boundary of Infringement of Second Creation Video

3.1. Infringement of Second Creation Video and the Development of the Fair Use System

Article 24 of the new Copyright Law provides for thirteen types of fair use, such as commentary and review belong to the scope of fair use. The infringement judgment of "secondary creation" mainly lies in the fact that the latter work is subordinate to the predecessor work. China's copyright law has not yet involved the use of reasonable judgment standards, only listed the specific circumstances of fair use, the existing judicial practice reflects the problem of insufficient. The newly revised Copyright Law did not expand the scope of fair use, but tightened the conditions for its determination, but some cases of "secondary creation" can still be freely disseminated because of fair use.

3.2. The Contradiction between Second Creation Video Infringement and the Fair Use System

The copyright system is based on the principle that the dissemination of works is controlled by the copyright holder, and dissemination without the consent of the right holder is limited to a few exceptions by law. This system design in the era of traditional media is not a big problem, but when the dissemination of institutions are no longer limited to newspapers, books, television broadcasts, movie theaters, the dissemination of the carrier is no longer dependent on expensive technical equipment, people into the "universal video" era, and the gradual formation of the long video and short video and the professional production of the common growth of ordinary users. Communication ecology, video dissemination is no longer monopolized by professional institutions, but become civilian; network with news and legal users of social communication and business to provide the content of the existence of mutual transformation, and even at the same time with both attributes. In view of this, the law on the "second creation" communication adjustment, it is necessary to take into account the changing reality of life in the digital age and social concepts.[4]

4. The Roots of Copyright Infringement Problems of Second Creation Video

In the era of digital communication, copyright protection faces greater difficulties, especially as short videos are quick and easy to copy, making it easier for pirated videos and clips

to flourish. With the increasingly large group of short video users, more and more people are involved in the production of short video works, among which, there is no lack of "out of the circle" behavior by piling up a large number of videos to make the account. On the one hand, many short video accounts do not need to spend a lot of time to produce and find creative, can quickly accumulate a large number of traffic, profit; on the other hand, the long video rights party due to the complexity of the process of rights protection, need to complain about too many videos, as well as the high cost and low income and give up the right to protect, which led to short video infringement is getting more and more intense.[5]

5. The Second Creation of Video Copyright Protection Countermeasures and Exploration

5.1. The Division of the Type of Copyright Protection of Second Creation Video

For "second creation" movie and television short videos, whether "fair use" constitutes an important part of whether it is infringing or not. The judgment of "reasonable use" is mainly reflected in the references to the original movie and television: (1) through editing and splicing, a movie is highly condensed into a short video with a relatively complete plot, and this kind of short video undoubtedly belongs to complete plagiarism, and is therefore also contrary to "reasonable use". (2) the short video is not a complete copy of the original movie and television, but a short video of the original movie. This kind of "second creation" short video is undoubtedly a complete plagiarism, and therefore also contrary to "fair use". (3) Adding narration or commentary on the basis of the first kind of short video. Whether this kind of video is in line with "fair use" should be analyzed in terms of the number of references, whether it harms the legitimate rights and interests of the right holders, and whether it affects the normal use of the original film or video. (4) Editing and synthesizing several original films and videos and injecting one's own ideas into them, so as to form a brand-new work. This kind of work is difficult to reproduce the originality of the original plot will not affect the normal use of the original, so it constitutes "fair use". Short video platforms should endeavor to grasp the scale of "fair use" when reviewing "second creation" videos, and the dissemination of second creation videos should be effectively distinguished from fair use.[6,7]

5.2. Copyright Management Organization for Second Creation Videos

Establishing a short video industry association and utilizing its self-regulatory and autonomous characteristics to regulate the production and development of "second creation" short videos. The industry association is a form of organization between the government and enterprises, which is dedicated to realizing industry self-regulation and improving industry governance. Industry associations have their own advantages in participating in national governance, and their internal drive for self-regulation is to safeguard the common interests of the industry. First, short video industry associations can assist government departments in formulating industry regulations and standards for the implementation of "second-generation" short videos in accordance with existing laws. Secondly, the short video industry association can conduct sampling tests and strict supervision of the "second creation"

film and TV short video products released by various platforms. Finally, the short video industry association can be commissioned by the government to investigate the development of "second creation" short videos, identify potential problems and threats in the industry, and make recommendations to the relevant departments for reference. [8,9]

5.3. Platform Supervision of Copyright of Second-Generation Videos

China's copyright protection of short videos is mainly regulated by the Copyright Law of the People's Republic of China and the Regulations for the Implementation of the Copyright Law of the People's Republic of China. For short video platforms, traffic and profit are the highest point of their operation. In order to ensure traffic and profits, it is common for short video platforms to utilize the circumvention in the above laws and regulations, i.e., short video platforms, after receiving infringement notices, take timely measures against the infringing short videos they released so that the platforms are exempted from being penalized. To strengthen the supervision of short video platforms, it is necessary to "notice + delete" program is its specific practical means of operation. In order to enhance the effectiveness of the infringement management of "second creation" videos, it is necessary to regulate the "Notice + Delete" procedure in detail.[10]

6. Conclusion

The existence of "second creation" short videos has its own rationality. The newly amended Copyright Law has clearly stipulated that "second creation" videos for profit-making purposes need to obtain authorization and permission from the original creator of the work. Perhaps, for those copyright platforms, the core problem is not that "second creation" infringes on the interests of the original, but the lack of quality original works and the lack of confidence in their own originality. As the "second creation" short video is a newly emerged industry in recent years, there are still a lot of chaos, but this does not mean that it is not conducive to the development of audiovisual. There are a lot of cold quality movie and television works, through the secondary

communication practices and innovations of "Erchuang" into the public's field of vision. At the same time, the publicity function of "second creation" will also stimulate the audience's feedback on original works.

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