

Research on the Scope of Obligations of China's Short Video Platforms in the Era of Digital Copyright

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Abstract: In order to balance the interests of right holders, network service providers and users, China first stipulated the "notice-takedown" rule in the Regulations on the Protection of the Right of Information Network Dissemination in 2006. Since the Internet industry is in the early stage of development, the copyright environment is relatively clear, and network service providers do not have to bear high obligations, so the allocation of copyright protection obligations in the rules is reasonable at that time. However, with the iterative development of digital technology and the Internet, various short video platforms have also risen rapidly in domestic and foreign markets. Therefore, it is necessary to re-determine the scope of obligations of short video platforms, summarize the key points of controversy between the theoretical and practical circles on the scope of obligations of short video platforms, point out the problems existing in the scope of obligations of short video platforms, and discuss the role of short video platforms in the obligation of active review, notification and review, and post-event protection obligations. Conduct an in-depth analysis of the extent of the obligations to be undertaken, and redefine the scope of obligations of the short video platform on this basis, with a view to balancing the interests of all parties and promoting the sustainable and healthy development of the short video industry.

Keywords: Active Review Filtering Obligations; Short Video Platform; Safe Harbor Rules.

1. Introduction

As of 2023, the number of users of short video platforms in China has exceeded 1 billion, accounting for 94.8% of the total number of netizens. In this context, the rise of short videos has brought severe challenges to the governance of copyright infringement on platforms. In the context of the era of digital copyright, the rise of short videos not only satisfies the public's demand for fragmented entertainment and shared expression, but also triggers another problem of copyright governance under the dual coercion of traffic and capital, which can be described as a mixed blessing. As the controller of short videos, platforms such as Kuaishou and Douyin are responsible for the dissemination, sharing, monitoring and management of videos, which is the link between copyright holders and platform users, and plays an important role in the protection of short video copyrights. However, in the face of traffic and dividends, many short video platforms are wavering, blinded by interests, and not only choose to turn a blind eye to the increasingly rampant and obvious copyright infringement, but also become the "accomplices" of violators, and try to evade responsibility through the safe harbor rule.

The definition of the scope of obligations of short video platforms is a key part of the governance of short video infringement. However, according to the current legal provisions, there are no clear provisions on the specific boundaries of the scope of obligations of short video platforms, and there are various views in the theoretical community on the delimitation of boundaries and the extent of liability that short video platforms should bear. G.B.CUI believes that the filtering technology of short video platforms is relatively mature, supplemented by manual error correction, it can be widely implemented, so short video platforms should bear the review obligation of the initiative; Y.T.Liu believes that some platforms, driven by profit-seeking psychology, will turn a blind eye to some very obvious infringements based on user stickiness and clicks, passively wait for notices,

and even collude with third-party institutions to produce short videos. In terms of fair use, many scholars also believe that filtering technology cannot distinguish between copyright infringement and fair use, which will cause damage to the right of speech. Finally, with regard to the ex post facto safeguard obligation, J.Zeng argued that the ex post facto safeguard obligation should be fulfilled in accordance with the "notice-necessary measures" rule to prevent repeated infringements, and cited extraterritorial experience that can be used as a mirror.

2. Organization of the Text

2.1. The Current Status of Legislation and Regulations on the Scope of Obligations of Short Video Platforms in the Digital Copyright Environment

2.1.1. The Development Status of the Short Video Platform Industry

With the rapid development of the background of the times and consumer demand, the number of users and market size of short video platforms are increasing year by year, and as of 2023, the number of users of short video platforms in China has exceeded 1 billion, accounting for 94.8% of the total number of netizens. In this context, the rise of short videos has brought severe challenges to the governance of copyright infringement on platforms. In the context of the era of digital copyright, the rise of short videos not only satisfies the public's demand for fragmented entertainment and shared expression, but also triggers another problem of copyright governance under the dual coercion of traffic and capital, which can be described as a mixed blessing. For example, platforms such as Kuaishou and Douyin, as the controllers of short videos, are responsible for the dissemination, sharing, monitoring and management of videos, and are the link between copyright owners and platform users, which plays an important role in the copyright protection of short videos.

However, in the face of traffic and dividends, many short video platforms are wavering, blinded by interests, and not only choose to turn a blind eye to the increasingly rampant and obvious copyright infringement, but also become the "accomplices" of violators, and try to evade responsibility through the safe harbor rule.

2.1.2. The Scope of Obligations of Short Video Platforms is the Status Quo of Legislative Legislation

Due to the lag of legislation, under the current legal framework, it is difficult for the liability of Internet service platforms to adapt to the copyright infringement caused by the rapid development of short videos. According to the business process of the short video platform, its obligations can be subdivided into the obligation of active review, the obligation of notification and review, and the obligation of post-event protection. However, China's legislation does not give short video platforms a general obligation to actively review, there is a lack of clear provisions on the notification and review obligations of short video platforms, and the discretionary space for "necessary measures" in the scope of ex post protection obligations is relatively flexible.

1. Failure to impose a general obligation of active review

The so-called active review obligation means that network service providers should actively review and supervise the video content uploaded by users before receiving the notice, and if infringement is discovered, they should immediately delete it, otherwise they must bear indirect infringement liability. Prior to the promulgation of the Civil Code, Article 8 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Disputes Involving Infringement of the Right of Information Network Transmission explicitly negated the obligation to take the initiative to review, emphasizing that "if a network service provider fails to take the initiative to review the infringement of the right of information network transmission by a network user, the people's court shall not find that it is at fault." Article 36 of the Tort Liability Law of the People's Republic of China similarly stipulates that network service providers must take necessary measures only when they know that network users use their network services to infringe on the civil rights and interests of others. Subsequently, Article 1197 of the Civil Code expanded the word "knowing" in Article 36 of the Tort Liability Law to "knowing or should have known". This article corresponds to the red flag rule, which is an exception to the safe harbor rule, that is, if the infringement is very obvious and flutters like a red flag, the network service provider should be deemed to be aware of the infringement and may require it to take proactive measures before receiving notice. However, even if measures are taken on the initiative, this article should not be deemed to be an explicit requirement for network service providers to undertake the obligation of active review, because according to the definition of "should know" in the Provisions, the infringements that network service providers should be aware of are very obvious infringements that can be discovered without review. Therefore, the current law does not require network service providers to undertake the obligation of active review, and if they fail to actively review the infringement, they should not be found to be at fault, nor can they be held legally liable.

2. The obligation to notify and review is unclear

The so-called notification review obligation means that the network service provider shall conduct a substantive review of the content of the notice received, and after determining the

infringement, it must promptly delete the infringing work. According to Articles 15 and 17 of the Regulations, the network service provider shall "immediately" take deletion measures after receiving the notice from the right holder, and at the same time, it shall "immediately" restore it after receiving the explanation from the service recipient. It can be seen that the Regulations completely regard the network service provider as a pure notification transmitter that establishes the transmission of information between the right holder and the network user. Article 1195 of the Civil Code stipulates that the network service provider shall take measures "based on the preliminary evidence of infringement and the type of service in the notice", and Article 1196 stipulates that the network service provider shall forward the counter-notice to the right holder, and decide whether to terminate the measures according to the specific behavior of the right holder (whether it is a complaint or a lawsuit). From the perspective of literal interpretation, can it be considered that the Civil Code requires network service providers to bear the obligation to review notices compared with the Regulations?

Throughout the revision process of the Civil Code, the improvement of the "notice-takedown" principle has been focused on the refinement of its procedures, and the content of the notice of the right holder has been very clearly stipulated, that is, the right holder is required to submit a preliminary proof of whether the infringement has been constituted and the link URL. This shows that in the eyes of legislators, the role of network service providers is still limited to those who do not have the ability to distinguish professionally, rather than those who are substantive examiners. In addition, if the law stipulates the obligation of the network service provider to notify the review, then the scope of the network service provider's review and the consequences of failing the review should be determined in detail, so as to determine the frequency of the right holder's re-notification. However, the provisions of the law do not clearly stipulate this, so the legislature does not intend to give it the corresponding obligation to notify and review. However, from the perspective of the nature of the legal provisions, if Article 1195 of the Civil Code is regarded as an attribution clause rather than an exemption clause, then in the context of attribution, after the right holder issues a notice, it will trigger the knowledge of the network service provider, resulting in liability. However, only after a substantive review of the content of the notice can the network service provider determine whether there is infringement, so it comes to the opposite conclusion. It can be seen that the provisions of the current law on this issue are not clear.

3. The discretionary space of "necessary measures" is more flexible

The obligation to protect after the fact is reflected in the measures taken by the network service provider to deal with the infringing content, and when responding to the infringing content, it must not only delete it, but also isolate and block it, so as to avoid repeated uploading of the infringing content, so as to protect itself and the right holder from secondary infringement. The Civil Code follows the provisions of Article 36 of the Tort Liability Law on "deleting, blocking, disconnecting links, etc.", and further improves the system of necessary measures on this basis. However, the term "necessary measures" in the Tort Liability Law evolved from the provision of "deletion or disconnection of the work" in Article 17 of the Regulations. This also shows that the

legislator affirms that ISPs should take other measures in addition to "removal" when dealing with infringing information, i.e., moving from the traditional principle of "notice-takedown" to "notice-necessary measures". In terms of the scope of necessary measures, the Civil Code adopts a non-exhaustive enumeration of the category of "necessary measures", and in addition to the three situations of "deletion", "blocking" and "disconnection", in order to leave room for the application of new measures, the word "etc." is added after the three specific provisions. Therefore, for other ex post facto safeguard measures, such as whether the network service provider should use technical methods to intercept the same type of infringing work uploaded, or ban the online account that commits multiple infringing acts for a period of time or even permanently, is still a topic with greater discretion that needs to be discussed in theory and practice according to the actual situation.

2.2. Theoretical Discussion on the Scope of Obligations of Short Video Platforms

2.2.1. Theoretical Exploration: The Debate on the Scope of Obligations of Short Video Platforms in a Theoretical Environment

Based on the current legal provisions, many foreign and domestic scholars have re-examined and rethought the scope of obligations of short video platforms based on the characteristics of short videos, the current development status of the industry, and the technical level. The author summarizes their views and reasons, and summarizes the following points of contention.

1. The Dispute over the Censorship Obligations of Short Video Platforms: "Active" or "Passive"

Some scholars argue that platforms should play the role of "active actors" and filter the copyright of uploaded videos before they are notified, so as to protect the rights and interests of rights holders to the greatest extent. First of all, in the short video communication model, user creation is the core of its mode operation. On this platform, the creation moves from professionalism to personalization, resulting in a large number of works. Tens of thousands of infringement incidents occur on short video platforms every day, and it is difficult for copyright owners to notify them in a timely manner and the cost is large, and they even have to entrust special organizations such as copyright agencies and copyright industry monitoring centers to monitor the entire network. At this time, the copyright owner has lost the ability to actively identify infringements, and the formulation of the "safe harbor" principle has lost its due significance. However, while enjoying huge dividends, the platform also needs to bear certain responsibilities. Second, based on factors such as profit-driven, user stickiness, and click-through rate, some platforms often turn a blind eye to some obvious infringements, passively wait for notices, and some may even collude with third-party organizations to produce them. Finally, the "safe harbor" rule is designed to avoid excessive liability for compensation by mere information providers, but compared with traditional video websites, short video platforms play a more active role in providing information, and their unique service methods increase the possibility of infringement and aggravate the consequences of infringement. At the same time, the positive relationship between the duty of care and the probability of infringement has also been recognized by many scholars. Some foreign scholars believe that copyright infringement is a negative externality caused

by the platform economic model, and that platforms have created favorable conditions for copyright infringement, so it needs to be subject to stricter scrutiny.

Scholars who oppose the "initiative" view of filtering argue that legitimate concerns about technical limitations and related costs are justified. While current copyright filtering technology has come a long way, it is not perfect enough and is likely to lead to some erroneous filtering. The European Court of Justice has held in its precedents that the filtering mechanism works by comparing keyframes and determining whether to filter based on the repetition rate, however, on short video platforms, there are a large number of secondary creations based on the original work, and there is a situation of "fair use", so it is difficult for the keyframe comparison technology to accurately distinguish the difference between infringing copy and fair use. Many United States scholars also argue that filtering technology cannot distinguish between copyright infringement and legitimacy, and will infringe on the right to speech. Existing foreign studies have indeed shown that the filtration system of OUtube has so far failed to identify fair use behavior. Second, for some small short video platforms, copyright filtering technology may cause them to bear a heavier burden of obligations, and in the end, the "law of the jungle" scene is becoming more and more intense in the short video industry. The eminent Professor Mark Lemley has pointed out that copyright filtering technology is very expensive and that it is expensive to set up a filtering mechanism. You Tube spends \$60 million a year on its filtering system, Content ID, which is bound to leave those already on the line.

2. The dispute over the review obligations of short video platforms: "postman" or "auditor"

At present, China's legislation is not clear enough on the notification and review obligations of network service providers, and the collision of theoretical views first occurred in the field of e-commerce. In recent years, due to the frequent occurrence of malicious complaints against competitors of other e-commerce platforms on e-commerce platforms to hinder their normal operations, some scholars have gradually realized that if the e-commerce platform that receives the notice is regarded as a "postman" without conducting a substantive review of its content, it is very likely to be exploited by malicious complainants. The complainant posted malicious complaints before the online shopping carnival, trying to monopolize the peak shopping period of consumers by cutting off the product links of normal operators. Therefore, e-commerce platforms should review consumer complaints, and once problems are found, they must be disconnected immediately, otherwise it will bring huge economic losses to legitimate operators.

Since then, the discussion of the notification review obligation has been extended to short videos. At present, the platform's review of notices is not strict enough, the "notice-takedown" mechanism is widely abused, and many complaints and reports without formal or substantive requirements can get a positive response from short video platforms without sufficient review. However, some people have pointed out that this kind of "logical experience" and "rule reconstruction" in the e-commerce industry has no significance for reference: first, the competition between short video sharing users is weak, and the audience is usually entertainment-oriented, and there are very few malicious reports against the exclusion of competition. Second, it is not uncommon for short video platforms to directly transmit other

people's works without the permission of the rights holder, and even if there are a few erroneous notices, the first priority should be to stop the infringement in a timely manner when weighing the benefits of recovering losses and accidental injuries. Moreover, unlike e-commerce platforms, short video platforms that delete or block within a short period of time will not cause any economic damage to users, and users can obtain relief by filing a counter-notice to the platform or filing a lawsuit for confirmation of non-infringement through the court.

3. Dispute over the After-the-fact Safeguard Obligations of Short Video Platforms: "Firewall" or "Fire Extinguisher"

Proponents of the "safe harbor" rule argue that network service providers only need to "extinguish" infringements peer-to-peer on the network, without worrying that the infringements will "burn out in the wildfires and regenerate in the spring breeze". However, in the era of digital copyright, the short video platform is a network service provider with a huge amount of storage, rapid spread of infringing content and frequent repeated infringement, which also makes the Internet information dissemination mode show the characteristics of "decentralization". Malicious infringement cannot be fundamentally prevented. Therefore, some scholars believe that short video platforms should follow the principle of "notice-necessary measures" and take ex post facto protection measures to avoid repeated infringement, and refer to the experience of foreign countries. The EU Directive stipulates that upon receipt of a substantive notification from a rights holder, the network service provider shall immediately delete or cut off the link to it and make every effort to prevent it from being uploaded in the future. For the first time, the United States Copyright Office also proposed the "notice-masking" principle, which stipulates that when network sharing service providers receive infringing information, in addition to taking measures to delete it, it must also monitor it technically to prevent it from being uploaded twice. It can be seen that in the case of increasingly serious copyright infringement, simply deleting the specific content in the notice can no longer achieve effective protection for copyright owners, and network service providers need to play the role of "firewall" in infringement.

2.2.2. Definition of the Scope of Obligations of Short Video Platforms in Judicial Practice

While the theoretical community has different views, the practical community is even more indifferent on the determination of the scope of obligations of short video platforms, and there are even completely opposite adjudication views.

1. The granting of the obligation to take the initiative to review

As mentioned earlier, the active review obligation of network service providers is excluded from the current law, and in some judicial decisions, courts have argued that the platform should only be removed if there is a clear infringement. However, in recent years, there has been a breakthrough in judicial practice, giving a higher duty of care to short video platforms. In the case of Chongqing Radio and Television Yingdu Communication Co., Ltd. v. iQiyi, the court held that although the law does not have an obligation to actively review network service providers, due to changes in the platform model, the burden of intellectual property protection needs to be redistributed, and the platform's responsibilities should be adjusted in light of factors such as the platform's mode of operation, users, types of works, and

review costs, and the platform's responsibilities should be divided into general, higher duty of care, and even the obligation of active review. There are also some cases that argue that short video platforms are not pure network service providers, and their active review obligations are not limited to the scope of the network service providers' obligations. For example, in the infringement case of iQIYI v. ByteDance's Yanxi Raiders, the court held that the "information flow recommendation" service provided by ByteDance has the risk of improving the efficiency of infringement diffusion, expanding the scope of communication and aggravating the effect of communication, and should bear a higher duty of care than ordinary Internet service providers. The Guangzhou Internet Court also held that Huya APP obtained revenue through the content of the platform, and was not a neutral online service provider, and should be liable for compensation for its failure to actively remove the infringing short videos. This provision is obviously a breakthrough in China's exemption from the obligation of active review by network service providers.

2. Determination of notification review obligations

In view of the lack of clarity in China's laws and regulations on the obligation of "notification review", some courts, based on Article 1195 of the Civil Code and Article 24 of the Regulations, hold that the consequences of mistakenly deleting a legal work should be attributed to the wrong notice of the right holder, and therefore, the short video platform is not responsible for this. The court held that the platform only fulfilled the obligation to delete based on the notice, and there was no obligation to identify copyright infringement, and there was no specific legal provision, so this also indirectly denied the notification and review obligation of the short video platform. However, some courts clearly stipulate in their reasons for judgment that the online video platform must conduct a certain review of the notice issued by the infringed party, otherwise it may lead to accidental deletion, which will affect the free dissemination of information. However, the Beijing Intellectual Property Court held that for network service providers, as long as a formal examination is conducted, there is no need for substantive examination. Since the Regulations only clearly stipulate the requirements for a notice of conformity and the rules for the disposal of a network service provider after receiving a notice of conformity, it does not require that when a network service provider receives a notice of conformity or uncertainty, it must bear the responsibility of contacting the right holder, conducting investigation, verification, etc., otherwise the operating expenses of the network service provider will be greatly increased.

3. Expansion of ex post facto safeguard obligations

Pursuant to Article 1195 of the Civil Code, in practice, short video platforms are generally required to undertake an ex post facto protection obligation to prevent repeated infringement, and the scope of this obligation is not limited to "deletion, blocking, and disconnection", showing a trend of expansion. For example, the Changsha Intermediate People's Court held that after receiving the notice, the Kuaishou platform only adopted the method of cutting off the link, and did not filter and review keywords such as video content and user name, nor did it take other reasonable means to avoid continuous and repeated infringements, and had the intention of helping to expand the consequences of the infringement. The People's Court of Chongqing Free Trade Zone held that after receiving the notice from the right holder, Toutiao did

not comply with the operation regulations or penalty regulations, and did not ban the user's account, which led to multiple infringements by the user, which should be an important consideration in increasing the amount of infringement compensation. The Chongqing Intermediate People's Court issued a pre-litigation injunction in the copyright infringement case of "Douluo Continent", holding that the respondent's unauthorized editing and removal of others' legal film and television works is an infringement, and in addition to deleting the infringing video, it should also be intercepted through copyright filtering and other means to prevent it from infringing again. The Beijing Intellectual Property Court held that when judging the type of necessary measures, it should make a comprehensive judgment on the type of necessary measures in accordance with the principle of prudence and reasonableness, taking into account the specific infringement situation, the type of Internet service provider, technical conditions and other factors. It can be seen that different types of network service providers, such as e-commerce platforms, long video platforms, and short video platforms, should have different responsibilities for post-event protection.

It can be seen that most courts have made a breakthrough in the "safe harbor" principle when dealing with the issue of short video platforms, and even some cases have broken the scope of liability for network service providers under the existing legal framework. The author believes that, on this basis, in order to better meet the needs of copyright protection in the digital era, the scope of liability borne by short video platforms should be redefined.

2.3. Redefinition of the Scope of Obligations of Short Video Platforms

2.3.1. The Introduction and Adaptation of the Obligation to Actively Review

With the increasing ability of short video platforms to control copyright content and the trend of scientific and technological progress, this provides a theoretical basis for the construction of the active review obligation of short video platforms. In view of the shortcomings of copyright filtering technology, it should be adjusted by establishing statutory filtering standards, introducing proof standards, and clarifying the rule of "warning-waiting for notice".

1. Introduction of the obligation of active review under the principle of technology for good

Traditional Internet service providers only play the role of "intermediaries" between the rights holder and the user, and because "technology is not possible", it restricts the effective control of copyright content, and the ability to identify copyright infringement is relatively weak, so the "safe harbor" rule imposes a passive review obligation on them. In contrast, short video platforms can not only use algorithm technology to accurately push video content, but also use algorithm-driven copyright filtering technology to monitor and screen infringing content, thereby significantly improving the control of copyright content and reducing the cost of controlling infringing content. With the advent of the era of digital copyright, all kinds of short video platforms are based on algorithms, and algorithm recommendation has gradually become an important means to enhance user stickiness and competitive advantage. The platform is not only the storer of copyrighted content, but also the disseminator of copyrighted content, and in modern society, it has gone beyond the traditional "intermediary" category. In

this case, the theoretical basis of the "safe harbor" rule has been "shaken", and the platform, as the real controller of copyright, can no longer simply apply the "safe harbor" rule to obtain exemption from the obligation of active censorship.

As Internet platforms become more and more in control of copyrighted content, the code of ethics and ethics on the Internet is also paying more and more attention to technology for good. The principle of technology for good means that in the process of developing and applying digital technology, all stakeholders should respect social ethics and citizens' rights, and actively prevent damage within the scope of technical and economic feasibility, so that digital technology can develop in the direction of good. Copyright filtering is a technology with obvious value tendency, and its main goal is to identify infringing content and help short video platforms deal with infringing acts in a timely manner, so as to protect the interests of copyright owners and maintain the network ecology, which is also the proper meaning of the concept of technology for good. In addition, copyright filtering technology is still in continuous progress, and its plasticity is very large, which can not only enable the platform to use filtering technology to prevent copyright infringement, but also provide a source of innovation for the research and development of related technologies, and promote the development of science and technology ethics. "Technology for Good" imposes an active review obligation for short video platforms in addition to "notice-takedown", and platforms have the ability and should assume the responsibility of "initiatives".

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Secondly, the perspective of proof standard can be introduced to construct a reasonable filtering standard. As for copyright filtering, most scholars at home and abroad have adopted an empirical viewpoint, believing that if the similarity between the first work and the later work reaches a certain percentage, then it can be considered that there is a high possibility of copyright infringement, so it can be filtered by technical means. In terms of copyright filtering criteria, the author believes that two main criteria can be set with reference to the Administrative Litigation Law: reasonable suspicion of "80% similarity" and "preponderance of evidence with 50% similarity". If the similarity between the

previous work and the next work does not reach 80% reasonable doubt, then it means that the platform cannot prove that there is infringement, so it should not be filtered out of protection for free speech. If the similarity between the two does not reach the preponderance of the evidence percentage (generally 50%), then it means that the platform has the ability to prove this, i.e., there will be no copyright infringement. In this case, a reasonable copyright filtering standard can be determined according to a certain percentage, that is, if in more than 80% of cases, it can be determined that the uploaded short video has been determined to be infringing, and it can be directly filtered. If the similarity between the two is less than 50%, the uploaded short video is considered not to be infringing and can be uploaded.

Finally, for potentially infringing content, a system of "early warning-waiting for notice" can be established. In copyright filtering, the most difficult issue to deal with is not the presumption of infringement or non-infringement, but the part of the infringement that may exist in between. For this type of copyrighted work, it is difficult for the platform to prove whether such work is infringing or not. In the author's opinion, for this type of content, platforms should adopt the "early warning-waiting notice" approach, that is, once the platform becomes aware of the suspected infringement of the short video uploaded by the user, it should send a warning notice to the right holder, informing it that its copyright may have been infringed and wait for the right holder to send a qualified notice, and then after receiving the preliminary evidence of infringement in the notice, it can take necessary measures. When the copyright filtering technology cannot correctly determine the short videos uploaded by users, it still falls into the category of "technical inability and insufficient control ability of the platform", in this case, the review obligation of this part should be returned to the right holder, and the platform must also return to the "safe haven" rule framework and play the role of "passive".

2.3.2. Affirmation and Improvement of Notification Review Obligations

The large number of recreated short videos has a fair use characteristic, which also further complicates its copyright issues. If the platform lacks the obligation to notify and review, it will lead to a large number of legitimate short videos being mistakenly deleted, and the dissemination value of the second short video will also be seriously weakened. In view of the operational burden of the platform arising from the notification review obligation, it is necessary to supplement and improve the requirements for qualified notification on this basis, and to pre-empt the counter-notification procedure.

1. Affirmation of the obligation to notify and review under fair use circumstances

As mentioned in the section on the obligation to actively review, most of the infringing information has been processed through copyright filtering technology, so the right holder will only notify the part that may be infringing or is not considered to be infringing, in which case (0-80%) of the short video is likely to constitute fair use. At present, malicious litigation against short videos is rare, however, because the line between "fair use" and "copyright infringement" is not clear, even in a non-malicious state, rights holders may issue a large number of false notices. The value and significance of fair use is not only that it restricts copyright, but also gives the public a legitimate reason and ability to fight against the monopoly and monopoly of copyright owners, so that the value of short video secondary creation can be maximized. The scope of the

obligation of the role of "postman" not only harms the legitimate rights of short video users and infringes on their fair use space, but also damages the balance of legal interests pursued by the Copyright Law, that is, the balance between the interests of copyright owners and the public interest. Therefore, it is not possible to simply quantitatively compare the illegal removal behavior with the erroneous deletion of legitimate short videos, so as to conclude that the interests of a few people are better to protect greater legal interests.

More importantly, although in theory, users can still remedy the situation through the "counter-notification" mechanism when a legitimate short video is mistakenly deleted, in practice, users rarely issue counter-notices to short video platforms. The first is that there will be infringement in many cases, the second is that users are not clear about whether their secondary works have been infringed, or whether they have played infringement "edge ball", and third, the income of counter-notification is not as high as that of e-commerce, and they are not willing to waste time and energy to carry out counter-notice, let alone go through the prosecution procedure. In the long run, users will also lose the enthusiasm for secondary creation.

2. Notices and counter-notices under fair use scenarios

In fact, copyright filtering technology can filter out similar content to a certain extent, and in principle, it can avoid a large number of infringement actions, which greatly relieves the pressure on the platform to deal with a large number of infringement notices. Given that the notification review obligation has the potential to put the platform under more pressure in terms of economy and judgment, it can be improved in the following ways:

From the perspective of rights holders, in today's proliferation of unqualified notices in China, it is necessary to impose strict formal requirements on them to curb the trend of further proliferation. The provisions on notification of conformity in the Civil Code are not uniform, but depend on the type and application of the specific network provider. At present, there are only two types of works on domestic short video platforms, one is self-made and the other is reprinted. On this basis, we can also make a more detailed division of self-production, which is divided into original works and secondary works, and the second creations are divided into three types: editing, commenting and banter. If an infringement lawsuit is filed against a second-generation short video with a large number of fair use circumstances, such as comments and jokes, the identity of the right holder and whether it constitutes infringement should be clearly stated in the notice, and a brief explanation should be given that it is not fair use. If the formal requirements are not met, the notice will not be sent or directly rejected, and the platform will not conduct a substantive review of it. This goes some way to reducing the stress of the process of reviewing a large number of complaints, and also avoids the fact that those who meet the conditions are not responded to in a timely manner.

From the standpoint of the platform, after receiving the qualified notice, the platform does not have to stick to the process of "deletion-counter-notification-restoration", and if there is a large dispute on whether there is infringement and it is difficult for the platform to make a judgment, it can adopt the method of pre-notification of counter-notification. The platform may promptly forward a notice of complaint to the netizen before the deletion, and the user shall respond to the complaint of the right holder within the specified time limit.

In this way, effective communication between the right holder and the short video platform, legitimate users or users without malicious infringement can be realized. Even if a web user does not necessarily issue a "counter-notice", the allegation of infringement and the description of fair use in the notice can be used as an explanation of the notice to the user.

2.3.3. The Status and Scope of the Ex Post Facto Safeguard Obligation

The "Notice – Necessary Measures" rule is more in line with the changes in the online environment and can be used to deal with the thorny problem of repeated infringement on short video platforms, and its status is worthy of recognition. However, the scope of necessary measures is still relatively vague, and the scope of ex post facto safeguard obligations should be defined according to the specific circumstances in accordance with the principle of proportionality.

1. The status of the ex post facto safeguard obligation in the case of repeated infringement

Theoretically, the obligation of ex post facto protection and the obligation of active review are both free from the traditional idea of aiding infringement, and are supported by the theory that infringement replaces liability. As an "employer" similar to an Internet user, when a short video platform receives an infringement notice, it should assume that it has information on whether its "employees" have committed infringing acts, and the use of copyright filtering technology can prevent "employees" from re-uploading similar or similar infringing works. In practical application, the platform can effectively reduce the repeated infringement of enterprises, reduce the number of notices, and alleviate the cost and pressure of the platform in responding to such incidents by taking post-event protection measures. At the same time, the "notice-necessary measures" also increase the possibility of interception, blocking or filtering of infringing information, which is consistent with the principle of efficiency in processing. At the same time, the copyright filtering under the "Notice-Necessary Measures" is carried out on the premise that the short video platform has a grasp of the basic information of the infringing work, the infringer and the infringed work, so it is easier and more accurate to prevent the repeated upload of similar infringing works than active filtering in advance. Therefore, when dealing with the copyright control of short videos, it is necessary to consider not only whether it has stopped providing online services to specific infringers, but also whether the platform has taken effective post-event protection measures in the future to avoid further infringement of subsequent infringements. It is necessary not only to abandon the existing targeted cleanup rules for a single infringing content, but also to consider how to improve and refine the rules for necessary measures to govern and control repeated infringements on the platform, so as to build a "firewall" to prevent the "recurrence" and "spread" of infringement.

2. The scope of ex post facto safeguard obligations from the perspective of the principle of proportionality

When defining the scope of short video platforms' obligations to provide post-event safeguards, the value orientation of the principle of proportionality should be followed. The Civil Code adopts a non-exhaustive enumeration of necessary measures to give network service providers a certain degree of autonomy, and 17 can implement ex post protection measures according to their own technical conditions, specific infringement circumstances, and the possibility of recurrence of infringement, leaving a certain

amount of flexibility. Therefore, the three measures of "deletion, shielding, and disconnection" stipulated in the Civil Code should not be regarded as the ex post facto safeguard obligations and exemption grounds that are applicable in any case. The necessary measures stipulated in the principle of proportionality should include at least two aspects: first, effectiveness, that is, on the short video platform, it can effectively prevent the continuation and recurrence of infringement and the expansion of damage results; The second is reasonableness, that is, the measures taken must not cause excessive damage to the platform and users. In the author's opinion, if it is a minor infringement, the responsibility of the platform is only to delete the short video, cut off the link with the allegedly infringing work, deduct the user's platform points, and require the user to pay a deposit, which cannot be expanded indefinitely. For example, in the infringement dispute case of Guangzhou Huya Company v. Warner, Warner requested that the Huya app be removed from the shelves only on the basis of a small number of infringing short videos on Huya's live broadcast, which constituted an abuse of rights and violated the principle of proportionality. If the situation is serious, the short video platform can activate the copyright filtering mechanism according to the specific situation, block similar infringing videos, or monitor and block the user's account for a period of time. If the circumstances are particularly serious, such as uploading a large number of obviously infringing videos multiple times, and circulating them widely on the Internet, causing the rights holder to suffer significant losses, then the platform can permanently ban it.

3. Conclusion

With the popularization of the Internet and the development and progress of Internet technology, the Internet has gradually moved from the initial union to interaction, which allows netizens to participate more in the creation, dissemination and sharing of information products. It is precisely the increasing interaction and dissemination that makes short video platforms the hardest hit area for copyright infringement. Therefore, in order to maintain the balance between the interests of all parties in the short video field, the scope of obligations of short video platforms should be redefined, from the obligation of active review, the obligation of notification and review, and the obligation of post-event protection. First, short video platforms should act as "active actors" with review obligations, and use copyright filtering technology to actively screen short videos uploaded by users. Secondly, in the obligation to review the notice, the platform should be required to conduct a substantive review of the content of the notice, and focus on the review of the fair use of the second creation of short videos; Finally, with regard to the ex post facto safeguard obligation, it should be stipulated that platforms must take necessary measures to prevent repeated infringement, and the scope of necessary measures should be defined according to the specific circumstances, with a view to promoting the sustainable and healthy development of short video platforms.

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References

- [1] J. E. ZHANG, "On the Copyright Indirect Liability System in United States," *Internet Law Review* discuss. J. vol. 7, pp. 23-75. Apr. 2006.
- [2] D. ZHU, "Transplantation and Variation of Indirect Tort Liability of Network Service Providers," *Chinese and foreign jurisprudence*. vol. 31, pp. 1340-1356. Oct. 2019.
- [3] J. XUE, "Research on online infringement clauses in the Civil Code: The framework of legal interpretation Refactoring as the center," *Comparative Law Studies*. vol. 4, pp. 131-144. Aug. 2020.
- [4] C. LI, "Institutional response to copyright issues in the short video industry," *Publishingline research*. vol. 04, pp. 5-8. Aug. 2019.
- [5] GARRY .G, "Platform liability in copyright enforcement," *Columbia Science and Technology Law Review*, vol. 02, pp. 237-281. Apr. 2020.
- [6] G. B. CUI, "Censorship of speech protection on online copyright content filtering measures," *Chinese and foreign jurisprudence*. vol. 33, pp. 305-326. Apr. 2021.
- [7] J. SONG, "UGC platform Notice-Necessary measures The trend of the development of the rules," *Science and technology Intellectual property finance*, vol. 4, pp. 39. Jul. 2022.
- [8] B. DONG, "Application and completion of the rules for the fair use of secondary creation of short videos Good," *Politics and Law*, vol. 5, pp. 141-149. Oct. 2022.
- [9] B. H. YU, "The jurisprudential nature of the principle of proportionality and its application in private law," *Chinese Jurisprudence*, vol. 6, pp. 134-155. Dec. 2022.
- [10] J. WANG, "A new interpretation of the duty of care for network storage service providers," *Legal Science (Journal of Northwest University of Political Science and Law)*, vol. 3, pp. 100-113. Jan. 2020.
- [11] Q. LIU, "The publicness of the network platform and its implementation to e-commerce platforms from the perspective of legal regulation," *Legal Studies*, vol. 2, pp. 42-56. Apr. 2020.
- [12] Q. XIONG, "Algorithmic push Determination of joint infringement with network service provider Rules," *Chinese Applied Law*, vol. 4, pp. 125-136. Nov. 2020.
- [13] J. ZENG, "On the Enlightenment of the EU Copyright Reform on the Responsibility of Short Video Sharing Platforms Show," *Electronic intellectual property*, VOL. 1, PP. 23-32. Feb. 2020.
- [14] X. J. TIAN, Y. D. Guo, "Set the platform copyright filtering obligations from the perspective Research on Copyright of Short Video Platforms," *Research on publication and distribution*, vol. 3, pp. 66-69. Apr. 2019.
- [15] J. Y. ZHANG, S. F. Wang, "Algorithmic recommendation services are provided under the principle of digital goodness the donor's duty of care," *Intellectual Property*, vol. 11, pp. 54-74. Oct. 2022.