Academic Journal of Management and Social Sciences
ISSN: 2958-4396 | Vol. 2, No. 2, 2023

Discussion on the Balance of Intellectual Property Interests under Big Data

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Abstract: Based on the era of big data, this paper first introduces the concept, connotation and function of interest balance, and then expounds the relationship between the era of big data and intellectual property rights, pointing out that big data has become an important driving force for social innovation and economic growth in the emerging stage, but it inevitably conflicts with the legal interests of intellectual property protection in the development process, which leads to the opportunities and challenges that intellectual property rights will face as private rights protection, and sums up how to protect intellectual property rights in the era of big data. On the premise of making full use of the data, we can play the role of balancing interests, so as to achieve the social public goal of promoting economic development, scientific and cultural prosperity with intellectual property rights.

Keywords: Era of big data; Intellectual property rights; Balance of interests.

1. Introduction

Big data is an inevitable product of the development of the Internet, and it is also the embodiment of the value of the Internet. Countries rely on the Internet to transform social resources in terms of data analysis and resource integration, and the social value represented by big data is constantly highlighted, followed by the continuous breakthrough in the application field of big data, and the boundary with traditional private rights is about to be broken. In the era of big data, the protection of intellectual property rights has attracted the attention of many countries and scholars. If the legal interests of intellectual property rights are not protected, individuals and enterprises will lose confidence in their innovation and development. Therefore, while realizing the social value of intellectual property and pursuing fairness and justice, it is particularly important to study how to achieve the balance of interests.

2. Connotation analysis of interest balance

1) Balance of interests is also called balance of interests. Generally speaking, it is to coordinate and distribute the interests under different systems or modes through laws or other methods and means, and finally realize the reasonable distribution of interests of all parties. Interest balance plays a very important role in the intellectual property system, because it is related to the contradiction and coordination between individual rights and public interests. The reason is that there are all kinds of subjects in society, and their interests are different, which leads to social contradictions. The contradiction between individuals and public interests is only one aspect of social contradictions. Due to the complexity of contradictions, there must be reasonable and effective means or methods to alleviate them. Law is the result of legislators adjusting social conflicts and interests, which can make the distribution of interests in a scientific and reasonable state.

2) Balance of interests is an important factor to be considered in modern legislation. In the process of making some laws, the balance of interests will be taken as the starting point, so that the laws can meet the balance of interests and meet the actual needs of society. In general, conflicts of interest can be resolved spontaneously by social adjustment. However, with the diversification of social interests and the expansion of interest demand, the conflict of interests breaks through the category of social spontaneous adjustment. The authority of law makes the interests involved in the conflict reach a reasonable and optimized state in the state of coexistence and compatibility. Therefore, law is an effective means to solve social conflicts of interest. Based on the stable evaluation system and standardized evaluation system, the law is both stable and effective, forming a systematic and effective mechanism to resolve conflicts of interest, and all conflicts of interest are in a state of balance.

3) The application of the principle of balance of interests should not only comply with the considerations of social development on order, efficiency and interests, but also take into account the realization of the goals of fairness and justice. It is not only the value judgment and foundation for the formulation and implementation of laws, but also the role and key for giving full play to legal functions. Intellectual property law is an important law to promote economic development in the environment of big data. It is necessary to grasp the basic principle of "balance of interests" and take the attributes of intellectual property into account when using the principle of balance of interests. Intellectual property, as an intangible asset, should measure the value of the problem when solving it, and finally reflect the symbiosis of interests, that is, harmonious value. The application of intellectual property rights should be more reflected in promoting the sustainable development of social economy, social harmony, civilization and sustainable progress. In order to achieve the goal of harmony, the most important consideration is how to better solve the conflict of interests through the balance of interests to achieve harmonious and sustainable development.

3. The relationship between the era of big data and intellectual property rights

1) McKinsey first proposed the era of big data. McKinsey said: "Today, data has been integrated into every industry and business function and has become the main productive factor." But up to now, there is no accepted and clear definition of this concept all over the world. People only use this word to define a large number of data that appeared in the era of information explosion, as well as the technological progress and innovation related to these data. We can conclude that the "big data era" refers to the activities that human beings actively use the Internet of Things, cloud computing and big data technology to explore and utilize data. Big data itself is huge, diverse, fast-spreading, and the data is true and reliable. The era of big data also has the characteristics of variability, comprehensiveness, accuracy and development. The so-called variability means that in the era of big data, the development of things is constantly changing, and the data is also changing. Comprehensiveness means that everything is universal, and the information provided by universal data is "all-round"; Accuracy means that with accurate data, the correct decision can be made; Development is to predict the future development trend of the event through the analysis and judgment of the data.

2) The emergence of intellectual property rights is closely related to the development of science and technology and the industrial revolution. Paying attention to knowledge achievements and making effective use of them to obtain economic benefits is the driving force for the development of modern intellectual property rights system. The emergence of intellectual property system aims at developing and rationally utilizing knowledge and technical resources. In the system of intellectual property law, knowledge creation is given all-round, comprehensive and fair consideration, so that knowledge creation exists as an unusual civil legal act and becomes the subject of intellectual property rights when the factual acts such as invention and intellectual creation are completed. The Intellectual Property Law has reached an agreement on the public social interest goal of promoting economic development and vigorously prospering science and culture by means of incentive mechanism and interest balance adjustment mechanism. In the patent law, trademark law, copyright law and other special categories of intellectual property rights, such a balance mechanism exists, and its legislative purpose is realized through this mechanism.

3) Big data is a new technological change. By collecting, analyzing and managing a large amount of data and information, it can provide reference for the future development direction of intellectual property rights and provide data and technical support for the practical application of intellectual property rights. At the same time, as the carrier of big data innovation and application, intellectual property rights promote, interact and integrate with each other. On the one hand, big data technology has penetrated into every stage of market economy development with the help of intellectual property rights; On the other hand, the co-construction and sharing of intellectual property by leveraging big data has broken through the boundaries of traditional fields, and its scope has been continuously expanded and extended. After the optimization of big data technology, the development, application, protection and management of intellectual property rights will create a new format.

From a legal perspective, the connection between big data and the object of civil legal relationship lies in the inseparable relationship between big data and intellectual property rights. On this basis, the adjustment of intellectual property rights to big data is reflected in the intellectual labor value related to people, which refers to the exclusive rights enjoyed by the holders of intellectual labor results, and big data itself can not only represent value, but also create value.

4. Conflicts of interest in the field of intellectual property law in the era of big data

1) conflicts of interest between personal needs and social needs

The purpose of the initial establishment of intellectual property rights is to provide legal protection for the creators of intellectual property works, in short, to provide legal monopoly rights for the creators. The modern social system has become more and more perfect, and the protection of intellectual property rights has also formed a system, which benefits from the public's understanding of the importance of intellectual property protection. However, in the process of big data application, there are quite complicated legal relationships between public and individual entities, especially involving personal privacy. Among them, personal privacy refers to the monopolistic use of intellectual property rights by individuals, which is not made public and announced, so that big data and the public cannot meet their own needs for intellectual property rights, which leads to the adverse effects of data loss, thus resulting in the contradiction between personal needs and social needs.

2) Conflicts between different types of intellectual property rights

In the era of big data, with the rapid development of digitalization, intellectual property law faces many challenges and problems, and the conflict of rights between different types of intellectual property rights is also an urgent problem to be solved. For example, the conflict between trademark and copyright is due to the fact that the objects to which trademarks are attached are the same on the surface, but the ways to which they are attached are different. In addition, there are some conflicts between design and trademark design. From the appearance analysis, they are identical, although they belong to two different functional design fields. Through design, consumers have a more intuitive feeling about the outer packaging of goods, increasing the attention of design, so as to guide consumers to enhance their desire to buy goods; Trademark design, on the other hand, pays more attention to the distinctiveness and uniqueness of design, so as to distinguish the same type of goods. In a word, both design and trademark design are expressed externally through art patterns. However, if the trademark design is taken as the main body during the product design, or the core part of the design appearance is emphasized during the trademark registration, two rights will be derived from the same object because of different angles of evaluation and approval, resulting in conflicts between the two rights.

3) Conflicts of interest between the creation, application and dissemination of intellectual property rights.

As we all know, the acquisition of intellectual property rights is not an exclusive right that can be acquired as long as achievements are invented and products are created. It is

judged according to the actual value of achievements or products in the process of promotion and application. Relevant departments recognize this right and protect it in the field of intellectual property rights. On the contrary, if an achievement or product does not get practical application or attract public attention after its appearance, it has no existence value and should not enjoy the same rights and protection. In the case of imperfect intellectual property law, the interests and rights of intellectual property dealers and users are easily ignored. However, if the intellectual property law takes into account the distribution of rights and interests among creation, application and communication, the relationship among them will have conflicts of interest, so the relationship among them will automatically become antagonistic, thus breaking the balance of interests.

5. Countermeasures under the balance of interests

1) Building a big data information vault is one of the main solutions proposed by the international community at present. The creators of intellectual property works allow companies, society and countries to obtain information data from the database as an information medium and use it. When an intellectual property creator obtains a patent right, he completely grasps the additional benefits of the right, and then he has to bear a series of risks, such as being copied or counterfeited by lawless elements in the process of subsequent use, thus losing the right to benefit from the right; If this patent right is only in our own hands, it will not be known to the public, which is unfavorable to the subsequent development of this patent. In order to solve this problem, a public data information platform is set up to share this right, but users need to pay a fee to the patentee in advance, so that the patentee can master, control and track the data of patent use through the platform while gaining benefits.

2) In the big data environment, the private property and exclusive rights of intellectual property have been seriously affected, and at the same time, many of its reservations in the public domain have also been challenged. Therefore, it is urgent to properly adjust the boundary between private rights and public interests, and to restrain and optimize the rights attached to them. Therefore, it is proposed to dynamically adjust the object of rights protection, clarify the boundary with the public domain, strengthen the optimization of the intellectual property system on the basis of protecting intellectual property rights, and leave enough space for the rational use of public interests. While implementing the system of promoting fair use, it can also prevent the achievements of intellectual property owners from being monopolized. This measure protects the legitimate rights and interests of intellectual property owners, meets the needs of the public and ensures the balance of interests between the two.

3) The principle of interest balance is the most critical and widely used principle in intellectual property rights. This principle regulates and regulates the behavior of creators, rights users and other members of the public. Under this principle, the creators of intellectual property rights can exercise their rights at will, but they should not cause losses or influence to the interests of other creators and the public during the exercise. If it causes losses and influences to others and the public, or if it is used incorrectly in the exercise process, the rights will be taken back and the law will no longer protect them. Although the public also has legal application rights, the scope and methods of application are still limited. Its fundamental requirement is not to harm and affect the ownership interests of the creators of intellectual property rights. Therefore, it is particularly important to play the principle of balance of interests and coordinate the interest relationship between the two.

6. Conclusion

In a word, with the continuous development and application of information technology in the era of big data, the speed of data dissemination and circulation has gradually accelerated, which has increased the convenience and uncontrollable infringement, and the balance of interests of intellectual property rights can easily be broken. In order to better meet the challenge, while reasonably protecting the interests of intellectual property owners, we should limit their rights, appropriately expand the scope reserved for the public domain, make full use of the principle of interest balance, realize the circulation and sharing of big data, fully show the positive impact of data, and lay the foundation for creating a benign digital ecology.

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