

Research on the Legal Regulation of Personal Self-made Online Audiovisual Programs

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Abstract: As the number of defamation cases involving self-made online audiovisual programs increases year by year, both in theory and practice, people are very concerned about how to better protect citizens' reputation rights. In the environment of self-made online audiovisual programs, the subjects of defamation are mostly anonymous, showing the characteristics of diversity and complexity. From these significant characteristics, it can be seen that the existing legal norms can no longer effectively regulate the defamation of self-made online audiovisual programs, and such cases have also brought certain troubles to the judicial organs in the actual handling process. This article makes a specific analysis of the most basic self-responsibilities that the two types of subjects, network users and network service providers, need to bear, as well as the joint and several liabilities that need to be borne with other subjects in different situations. Then, it discusses the particularity of the four liability-bearing methods of stopping infringement, eliminating influence and restoring reputation, apologizing, and compensating for damages in the process of applying the defamation cases of self-made online audiovisual programs, so as to curb the behavior of for-profit self-made online audiovisual programs abusing their right to criticize for profit and enable the infringed to obtain effective relief.

Keywords: Self-made online audiovisual programs, Online communication, Right to reputation, Principle of attribution, Legal regulation.

1. Introduction

The entry threshold for self-made online audiovisual programs is relatively low, and users often publish information quickly without verifying it, which can easily lead to information distortion. Infringing information spreads rapidly and widely in the space of self-made online audiovisual programs, and sometimes even evolves into online violence [1]. With the improvement of legal awareness, more and more infringed parties have begun to seek legal remedies, and the number of cases of defamation of self-made online audiovisual programs in my country's judicial practice has also increased. Improving the regulation and remedies for defamation of self-made online audiovisual programs is a measure that conforms to the development of the times and complies with public opinion [2]. At present, my country has not yet enacted special legislation for defamation of self-made online audiovisual programs, nor has it made special provisions for some special issues in defamation of self-made online audiovisual programs. Against the background of increasingly frequent defamation of self-made online audiovisual programs, it is urgent to conduct special research on the defamation of self-made online audiovisual programs. By studying the issue of defamation of self-made online audiovisual programs and improving relevant systems and mechanisms, it will be helpful to reduce disputes over defamation of self-made online audiovisual programs, purify the environment for the operation of self-made online audiovisual programs, give play to the positive influence of self-made online audiovisual programs, and promote the healthy development of the personally-made online audiovisual program industry.

2. The Causes and Particularities of Infringement of Self-made Online Audiovisual Programs

Defamation of self-made online audiovisual programs is an extension of traditional defamation in the field of self-made online audiovisual programs, but it has its own particularities in terms of constituent elements, grounds for defense, and protection methods [3]. The author attempts to define defamation of self-made online audiovisual programs as the situation in which users of self-made online audiovisual programs or platforms of self-made online audiovisual programs, in the environment of self-made online audiovisual programs, fabricate and spread various false facts without verification or even fabricate and spread various false facts, or use insults, defamation and other methods to infringe on the reputation rights and interests of others, causing negative impacts on the social evaluation of the rights holder [4]. The means of defamation of self-made online audiovisual programs are diverse and the situations are complicated, which will cause huge property losses and serious mental damage to the rights holder, and at the same time bring adverse social impacts.

2.1. The reasons for infringement of personal self-made online audiovisual programs

In an era when self-made online audiovisual programs are vying for hot spots, many self-made online audiovisual programs are inevitably eager for quick results, abandoning the original thinking and judgment, and quickly releasing information before it is verified in order to ensure that they become early information publishers, so as to gain more attention, comments and praise, and win information dividends [5]. In the information dissemination stage, the mesh dissemination structure of self-made online audiovisual

programs can quickly spread the infringing information released by a certain node to various connection points and push it to hundreds of millions of users. The infringement damage caused by such widespread dissemination of infringing information is often irreversible. Even if the perpetrator immediately edits, modifies or even deletes the previously published content after realizing that the information is infringing, the relevant infringing content has been viewed and forwarded in large quantities in a short period of time after being released, entering a new round of dissemination.

The participants of self-made online audiovisual programs are extensive, including people of all ages and educational backgrounds [6]. The entry threshold of self-made online audiovisual programs is low. Users do not need sufficient knowledge reserves or extraordinary talents. They only need to have a device with Internet access and register for a relevant platform account (mostly free) to publish content at will. The published content can be an instant sharing of current events around them, a casual reprint of hot news, a subjective evaluation of other people's words and deeds, or an impromptu record of their own thoughts. In addition, in addition to browsing and reading information, users of self-made online audiovisual programs can also comment and like, and can further process and continue to spread [7]. The dissemination of information and the discussion of events are no longer the opinions of traditional media, but the contention of a hundred schools of thought among the vast number of users of self-made online audiovisual programs.

As of December 2024, the number of Internet users in my country has reached 1.108 billion, and the number is still growing and the coverage is still expanding. At the same time, there are many young users among Chinese Internet users, of which 34.9% are under 30 years old. The average education level of Chinese Internet users is low, of which 80.2% have a high school degree or below. ① When these users encounter information asymmetry, conflicting opinions and other problems on their own self-made online audiovisual programs platforms, they will inevitably infringe on their reputation rights due to biased ideas and excessive speech.

2.2. The particularity of defamation infringement by self-made online audiovisual programs

The infringing subjects involved in the defamation of self-made online audiovisual programs include not only the publishers of the infringing content, but also some forwarders and self-made online audio-visual program platforms. The original publishers of the infringing content are the most common infringing subjects in the defamation of self-made online audiovisual programs [8]. Users of self-made online audiovisual programs who fail to exercise reasonable care when forwarding content may also become infringing subjects. In the defamation of self-made online audiovisual programs, the forwarders of the infringing content are often the promoters of the defamation. With the development of self-made online audiovisual programs, the newly promulgated relevant judicial interpretations also clearly include forwarding users on the platforms of self-made online audiovisual programs as infringing subjects.

Spreading infringing content that defames the rights holder's reputation can easily cause the public to misunderstand the rights holder's inner personality and brand image, leading to a decline in the rights holder's social

evaluation and social status [9]. The result of defamation caused by personal self-made online audiovisual programs is not only the defamation of the rights holder's reputation, but also may cause property losses and mental damage.

The cost of defamation of self-made online audiovisual programs is low, and it is more anonymous and implicit. Compared with the traditional infringement method of publishing insulting and defamatory remarks in paper media such as books, magazines, newspapers, or in public places, the cost of directly publishing infringing remarks through media channels is lower. There is no need to go through the layers of review system of paper media, and you only need to log in to the account of self-made online audiovisual programs to publish them immediately.

In traditional defamation, the infringed party has the right to demand that the infringement stop, restore reputation, and eliminate the impact. The above protection methods are also applicable to the protection of defamation of self-made online audiovisual programs. However, considering the characteristics of defamation of self-made online audiovisual programs, the protection of defamation of self-made online audiovisual programs has its own particularity and pertinence, including the assistance of the self-made online audio-visual program platform to stop the infringement and the release of a public apology on the self-made online audio-visual program platform [10]. The dissemination of information on the self-made online audio-visual program platform is immediate and extensive. It is not only the infringer who releases the infringing information that will cause damage to the right to reputation. Any forwarding, liking, and commenting by any informed person will be secondary dissemination or secondary damage.

3. Problems in the Legal Protection of Defamation of Personal Self-made Online Audiovisual Programs

3.1. Insufficient supply of relevant legal systems

At present, my country still has insufficient legal system for the protection of defamation of self-made online audiovisual programs, and the relevant laws and regulations are not complete. The existing legal norms cannot cover a series of issues related to defamation of self-made online audiovisual programs, and lack special provisions for defamation of self-made online audiovisual programs.

Personally made online audio-visual programs have both the functions of traditional media and their own characteristics. These characteristics determine that it is not appropriate to equate the defamation of personal self-made online audiovisual programs with traditional defamation activities, and more specific and targeted legal regulations are needed. Up to now, my country has not enacted special legislation or issued corresponding judicial interpretations on defamation of personal self-made online audiovisual programs. Most of the existing legal provisions are relatively scattered and scattered in various laws and regulations related to information networks. As mentioned above, the current legal provisions on defamation of personal self-made online audiovisual programs are mainly concentrated in the Personal Rights and Tort Liability of the Civil Code. Faced with the increasing number of infringement incidents that damage the reputation of others by using personal self-made online

audiovisual programs, although there are comprehensive laws to regulate them, there is a lack of corresponding specific provisions and there are few applicable laws, which makes it currently not effectively regulated by the use of personal self-made online audiovisual programs to commit defamation.

Prosecution often takes a lot of time and money. Can you report to the police to protect your rights, or can you file a complaint with the Cyberspace Administration of China? How should the relevant procedures be carried out? All of the above needs to be clearly stipulated in the subsequent improvement of the legal system. In general, the lack of a systematic law has great limitations in regulating defamation of personal self-made online audiovisual programs. It is not conducive to protecting the legitimate rights and interests of the reputation right holder, nor is it conducive to the healthy development of the personal self-made online audio-visual program industry. It is urgent to strengthen the supply of relevant legal systems.

3.2. There are loopholes in relevant laws and regulations

The relevant provisions of the Civil Code are concise and concise, with more content than principles and less operation. They cannot effectively adapt to the requirements of economic and social development, nor can they effectively solve the practical problems of defamation of personal self-made online audiovisual programs in response to the needs of the public. For example, what is the time range of "timely" in the "notification-deletion" rule in Article 1195 of the Civil Code? The judicial interpretation stipulates that this provision should be comprehensively judged based on factors such as the type and nature of network services, the form and accuracy of effective notifications, etc. However, when it comes to the application of judicial practice, it still lacks precision and operability, and judges need to exercise their discretion.

Relevant judicial interpretations stipulate that the platform's own factors and infringing information factors should be comprehensively considered. In terms of the platform's own factors, it should be considered whether the platform has the ability to manage and review information, avoid the occurrence and expansion of infringements, whether the platform has taken certain infringement prevention measures, and whether the platform has taken measures against repeated infringements or the same infringement. In terms of infringing information, it should be considered what type of infringement the infringing information belongs to and whether the infringement is obvious, and whether the number of views, discussions, and social impact of the infringing information is sufficient to attract the attention of the platform. Such vague regulations lead to the need to rely more on the judge's inner judgment in judicial practice. Defamation is different from other torts. It has its own particularity and abstractness. Especially in the environment of personal self-made online audiovisual programs, how to determine the facts of the case is a difficult point, and judges often cannot make judgments based on those general regulations alone.

3.3. The standard of compensation for property damage is too low

Property losses can be divided into direct losses and indirect losses. Direct losses are the reduction of profits already obtained. The judicial interpretation stipulates that

direct losses include reasonable expenses paid by the right holder to stop the infringement, including investigation and evidence collection fees and attorney fees. Indirect losses are mainly the loss of profits. The judicial interpretation stipulates that when the property losses of the right holder and the profits obtained by the infringer cannot be determined, the court shall determine the amount of compensation within the range of 500,000 yuan based on the specific circumstances of the case. The direct or indirect economic losses caused by the damage to the reputation of the enterprise may also be huge, but due to the limit of 500,000 yuan, the damage to the reputation of the enterprise cannot be fully remedied, and it also leaves gray space for the unfair competition of the enterprise. The current judicial interpretation on the 500,000 yuan limit on property losses is applicable on the premise that property losses and the profits generated by the infringer due to infringement are difficult to determine, but it is easy to lead to abuse in judicial practice.

4. Suggestions on Improving the Protection of Defamation of Self-made Online Audiovisual Programs in My Country

4.1. Strengthen the supply of relevant legal systems

At present, my country does not have any special legislation or judicial interpretation against defamation by self-made online audiovisual programs. When dealing with cases of defamation by self-made online audiovisual programs, the general provisions of the Personal Rights and Tort Liability sections of the Civil Code and the provisions on network infringement are mostly applicable. The existing legal system is not yet able to cope with the series of problems brought about by defamation by self-made online audiovisual programs. It is necessary to sort out and integrate the existing laws and regulations and strengthen the supply of relevant legal systems.

When the conditions for legislation are in place, special legislation can be enacted for defamation of self-made online audiovisual programs. The scattered provisions of existing laws and departmental and local legislation should be sorted out and summarized, and more scientific and rigorous individual laws should be formulated. The unreasonable provisions that conflicted with this law in the past should be abolished, so that the new law can maintain its authority and consistency. The defamation of self-made online audiovisual programs is different from traditional defamation. It has the characteristics of difficult subject identification, diverse infringement methods, and serious damage results. When legislating, it is necessary to fully consider the characteristics of defamation of self-made online audiovisual programs and formulate corresponding regulations based on the characteristics. It can also be improved in the subsequent revision of the Civil Code. It is necessary to speed up the issuance of new judicial interpretations, revise some of the limitations of the old judicial interpretations, and make specific explanations on the difficulties of trial in judicial practice based on the characteristics of defamation of self-made online audiovisual programs, and provide directional instructions on how judges make judgments.

4.2. Filling the gaps in relevant laws and regulations

Filling the loopholes in relevant laws and regulations is in line with strengthening the supply of relevant legal systems. On the basis of strengthening the supply of relevant legal systems, it is necessary to enhance the operability and applicability of existing legal system rules and provide guidance for the difficulties of judicial trials. To fill the loopholes in relevant legal system rules, we can clarify the relevant concepts of defamation of self-made online audiovisual programs, distinguish the infringing subjects, clarify the elements of infringement, and set standards for abstract fault and causal relationship identification in subsequent legislation and judicial interpretation. Clarify the infringing subjects and obligations of each subject in the defamation of self-made online audiovisual programs. Generally speaking, the subjects of defamation of self-made online audiovisual programs are divided into users of self-made online audiovisual programs and platforms of self-made online audiovisual programs. Users of self-made online audiovisual programs are further divided into publishers and forwarders and commentators. When legislating, it is necessary to set a duty of care for users of self-made online audiovisual programs to ensure the appropriateness and authenticity of their speech. The obligations of publishers, forwarders and platforms of infringing content are different, and their fault identification requirements should also be different. Regarding the fault of the publisher of infringing content, a standard similar to "honest and prudent person" can be proposed in judicial interpretation, and the determination of subjective fault can be transformed into a judgment on whether the actor has fulfilled the due diligence duty. The due diligence duty of the publisher of infringing content includes that the speech is basically or roughly true, the opinions are roughly objective, and insulting words are not used. Once the speech is suspected of infringement, actively cooperate with the investigation and evidence collection and take the initiative to eliminate adverse effects. Once the content is published on a personal self-made online audio-visual program, there will be countless forwarders and commentators. How to determine the causal relationship and the influence of the causal relationship in the complex relationship requires clearer legal provisions. It is possible to consider introducing the reading, click and forwarding volume of the infringing content and the evaluation of other users, and use information data to intuitively confirm whether the causal relationship is established.

4.3. Introducing a punitive compensation system

Regarding the application of the punitive compensation system in the field of defamation of self-made online audiovisual programs, two aspects should be clarified. One is the confirmation of the application premise, and the other is the determination of the amount of punitive compensation. Regarding the application premise of the punitive compensation system, due to the punitive and severe nature of the system itself, it is necessary to apply it with caution in practice, and its scope should not be expanded. It can be limited to the premise that the defamation of self-made online audiovisual programs has caused serious social impact.

Regarding the determination of the amount of punitive damages, different calculation bases can be adopted

according to different damage results. When calculating compensation for economic losses, reference can be made to the Food Safety Law, the Judicial Interpretation of Commercial Housing Sales Contract Dispute Cases, the Consumer Rights Protection Law, etc., and the actual losses suffered or the benefits obtained by the infringer as a result shall be used as the basis for doubling the punitive damages. When calculating compensation for mental damages, reference can be made to the Supreme Court's judicial interpretation on compensation for mental damages, and the amount of mental damages calculated based on the tort fault, circumstances, consequences, the infringer's profit situation, economic ability and local living standards shall be used as the basis for doubling the punitive damages.

5. Conclusion

Personally-made online audiovisual programs are emerging products of the Internet era. The emergence of self-made online audiovisual programs has broken the traditional media structure. Its dissemination mode is different from that of traditional media. Personally-made online audiovisual programs are a form of media freely controlled by the public. The information they publish will not go through a strict approval process, so the public's expression of speech has become unprecedentedly free, and therefore some infringement phenomena will inevitably occur. The defamation of self-made online audiovisual programs is essentially an extension of traditional defamation on the Internet, so it has its own particularity. Therefore, when hearing cases of defamation of self-made online audiovisual programs, judges can refer to the judgment ideas of traditional defamation, but they must also make judgments based on the characteristics of self-made online audiovisual programs. In addition, my country currently does not have any laws, regulations or judicial interpretations specifically regulating defamation of self-made online audiovisual programs. In practice, judges judge such cases mainly based on the relevant legal provisions on network infringement in the Tort Liability Code of the Civil Code, so there will be a certain lag in the application of existing laws in cases of defamation of self-made online audiovisual programs. Therefore, cases of defamation of self-made online audiovisual programs have brought new challenges to judicial practice and my country's existing legal system.

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