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Punitive Damages for Copyright Infringement in China: Application Practice, Theoretical Reflection and Optimisation Paths

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Abstract: Copyright protection has always been an important issue in development, and the Copyright Law amended in 2020 formally established a system of punitive damages ranging from 1 to 5 times, aiming at combating intentional infringement and aggravated acts. Through the analysis of the determination of 'intentional infringement' and 'aggravating circumstances and the calculation of the amount in practice, it is found that the conditions for the application of punitive damages and the calculation of the amount are ambiguous. We analyses the principle provisions and specific application of punitive damages in terms of jurisprudence, and try to optimize the practice path of punitive damages by means of supplementary legislation and judicial empowerment.

Keywords: Copyright Infringement; Punitive Damages; Conditions for Application; Calculation of Amount.

1. Introduction

The Internet and digital technology are a double-edged sword. While its rapid development brings great convenience to works, it also brings many problems and challenges to copyright protection. In the era of digitalization, there are more ways of creating works, wider dissemination of works, and the phenomenon of copyright infringement has also increased. Up to now, the total number of copyright infringement cases in China has exceeded one million. Although the number of cases is large, the amount of compensation awarded in the overall number of cases is on the low side, making it difficult to cover the time and labour costs incurred by the right holders in the process of defending their rights, as well as the costs incurred for investigation, travelling, evidence collection and lawyers' fees.

In the aforementioned cases of infringement, in addition to general infringement, there are also cases of 'malicious' infringement. Based on this background, the Copyright Law of the People's Republic of China (hereinafter referred to as the 'Copyright Law') was amended in 2020 to add a system of punitive damages ranging from one to five times the amount of statutory damages, with the aim of punishing, deterring and preventing malicious infringement.[1] And since the establishment of the system in 2023, the people's courts in judicial practice have rarely supported the plaintiff's request for punitive damages. There are two reasons for this: on the one hand, there are difficulties in determining the subjective and objective elements of the application of punitive damages; on the other hand, there are difficulties in calculating the amount of punitive damages.[2]

In view of this, the Supreme People's Court issued the Interpretation of the Supreme People's Court on the Application of Punitive Damages in Trial of Civil Cases of Infringement of Intellectual Property Rights (hereinafter referred to as the 'Interpretation of the Judicial Interpretation of Punitive Damages') in 2021, which is specifically focused on the field of intellectual property rights, and provides a more detailed basis for the determination of the 'wilful infringement' and 'aggravated The Judicial Interpretations on Punitive Damages in the Field of Intellectual Property (hereinafter referred to as the 'Judicial Interpretations on Punitive Damages'), in particular, provide a more detailed basis for the determination of 'intentional infringement' and 'aggravating circumstances'.[3]Along with this explanation, a number of typical cases of applying punitive damages were released.[4]Since then, various local courts have issued cases applying punitive damages in civil intellectual property cases. Among them, the specific breakdown of the case is mostly focused on trademark infringement, and there are very few cases on copyright infringement. This paper attempts to judicial practice as the entry point, the application of punitive damages in copyright infringement cases for analysis, in order to improve the system of punitive damages for copyright.

2. Practical Analysis: The Practice of Applying Punitive Damages for Copyrights

Punitive damages, as one of the higher levels of liability for copyright infringement, is subject to stricter conditions than ordinary infringement liability. In addition to meeting the constituent elements of general infringement, the issues involved in the application of punitive damages are: firstly, whether it meets the requirements of 'intentional infringement' and 'aggravating circumstances'; and secondly, how the amount of punitive damages should be calculated. [5] A search reveals that cases in which punitive damages have been applied have been characterised as 'single'. Not only is the subject of the litigation single, most of the subjects are copyright collective management organisations; the court's reasoning for the decision is also relatively single, basically on the basis of Article 4 of the 'Judicial Interpretation of Punitive Damages', which is not a very sufficient reasoning.

2.1. Prerequisites for Application: Determination of "Intentional Violations" and "Aggravating Circumstances"

The Judicial Interpretation on Punitive Damages categorizes "intentional infringement" as a subjective element and "aggravating circumstances" as an objective element.[6] According to Article 54 of the Copyright Law, the conditions of "intentional infringement" and "aggravating circumstances" must be met before the liability of punitive damages can be applied. However, in practice, the determination of "intentional infringement" and "aggravating circumstances" is still "ambiguous".

With regard to "intentional infringement", article 3 of the Judicial Interpretation of Punitive Damages sets out the following considerations: type of object, status of the right, popularity, and the relationship between the plaintiff and the defendant.

With regard to the recognition of popularity, the Suzhou Intermediate People's Court of Jiangsu Province held in the "Little Yellow Man" case that the defendant had committed "intentional infringement": the defendant knew or should have known that its actions infringed on the plaintiff's legitimate rights and interests. The plaintiff owns the film "God steal the milk daddy" on the "little yellow man" cartoon image of the art work copyright, and the "little yellow man" image has a high reputation in China. The Defendant sold the infringing products through online and offline channels without authorisation, involving a wide range of products, a wide range of distributors, and frequent participation in exhibitions and sales fairs. The Defendant should have known that the copyright of "Little Yellow Man" belonged to the Plaintiff Universal. In the "little yellow man" high popularity of the background, the defendant without its consent, subjective infringement of "intent". At the same time, on the basis of the foregoing facts, the court held that the defendant's subjective intent to infringe was greater in the light of the high reputation of the "little yellow man" in question.

With regard to the determination of continuing infringement, the Zhangzhou City Intermediate Court of Fujian Province held that the sending of a lawyer's letter of warning and the failure to stop the infringement could constitute a case under article 3, paragraph 1, of the Judicial Interpretation of Punitive Damages. However, in contrast, in a series of cases, the Central Court of Yan'an City, Shaanxi Province, held that the receipt of the lawyer's letter did not prove that it had received the warning and only its subjective intent, and thus rejected the plaintiff's punitive damages claim. But only for the aforementioned yan'an intermediate court decision, this article think too far-fetched. In practice, the law should not be "difficult", if the receipt of the receipt can not prove that it has received the relevant information, then in what way to prove it?

Another factor was the determination of the relationship between the plaintiff and the defendant, but another manifestation of "intentional infringement" occurred from time to time, namely, the existence of, or previous existence of, a "specific" service relationship, such as labour, labour service, cooperation, licensing, distribution, agency, representation, etc. The Supreme People's Court held that, in the context of the existence of a five-year cooperation agreement between the two parties with the knowledge of the intention, and after the termination of the cooperation agreement, the defendant knew that it did not have the right to use the plaintiff's software, but still bypassed the technical protection of the use of the behaviour belongs to the "Punitive Damages Judicial Interpretation of the" third paragraph of Article 3 of the situation. If the infringement occurs, based on the aforementioned "specific" relationship, the tortfeasor compared to the ordinary "knowingly", the tortfeasor subjectively with greater intent. The reason is that the infringer has more in-depth understanding of the copyright in question than the general public, and the subjective degree of intentionality is aggravated compared with that of ordinary infringement.

With regard to "aggravating circumstances", article 4 of the Judicial Interpretation of Punitive Damages stipulates factors to be taken into account, including the manner, duration, scope and consequences of the infringement.

Practice most of the cases for repeated infringement of the determination, such as in the China audio and video copyright collective management association (hereinafter referred to as the association) as the plaintiff in a series of claims, the people's court of shaanxi province, yunnan province, the defendant in the case before the infringement of the plaintiff's work screening rights by the people's court judgement liable, the defendant to carry out the infringement again belongs to the circumstances of the situation is serious, according to the law can be applied to punitive damages. Compensation. It is not difficult to understand, in the case of the previous judgement, the defendant has been aware of the infringement. On the basis of not fulfilling the previous judgement, continue to infringement, the essence of the plaintiff's rights again, is the first infringement of the "aggravation of the result". In their judgements, the courts have explicitly referred to the aforementioned situation as "aggravating circumstances" in the conditions for the application of punitive damages.

As for the determination of other considerations, the other "serious circumstances" stipulated in Article 4 of the Judicial Interpretation of Punitive Damages, in the case of "Little Yellow Man", the Suzhou Intermediate Court held that, according to the defendant's publicity, the product "sold more than 250,000 pieces of a single product in only three months, with sales exceeding 15 million." In addition, not long after the plaintiff discovered the target, it applied to the court for behavioural preservation measures in the lawsuit, and the Suzhou Intermediate People's Court issued an injunction ruling after a hearing, ordering the defendant in the case to immediately stop using the "little yellow man" for publicity, and to stop producing or selling products that infringed on the copyright of the "little yellow man" cartoon image. The Court issued an injunction ordering the defendants to immediately stop promoting "Little Yellow Man" and stop producing or selling infringing dairy products. However, from the injunction issued to the court nearly a year, Alibaba 1688 website wholesale platform is still infringing products, and the shelf life of the product is only 9 months, so the court found that the defendant in the injunction ruling after the entry into force of the production and sale of the infringing products. Thus, the Suzhou Intermediate Court found that the defendant's infringing behaviour fell within the scope of "aggravating circumstances" by arguing that the scope of infringement was extensive, the infringing behaviour was egregious, and the infringing profits were huge.

2.2. Modalities of Application: "Base" and "Multiplier" in the Calculation of the Amount of Punitive Damages

After determining that the elements of "intentional infringement" and "aggravating circumstances" for punitive damages have been met, another difficulty lies in the calculation of the amount of punitive damages. As an intangible property right, the value and amount of copyright is difficult to estimate. The basis for calculating the amount of punitive damages relies on the actual loss, illegal income, licence fee and so on. In practice, it is difficult to fix a set of uniform standards for determining the calculation base, which makes it often difficult to calculate accurately, and is mostly left to the discretion of the judge according to the circumstances of the case.

With regard to the calculation of the "base figure", the practical difficulty lies in the fact that it is not possible to establish a uniform calculation standard for each industry. This is because it is often difficult to define the actual loss and the proceeds of the offence. The second article of the Judicial Interpretation of Punitive Damages makes it clear that the plaintiff should give the amount of compensation and the method of calculation when suing. When it is not possible to accurately derive the relevant "base" amount, the application of punitive damages may also be hindered. In practice, the calculation of the "base amount" relies on the licence fee of the right holder and the discretion of the court.

In a series of cases sued by the Association, the Association proved that its copyright royalties were published on its official website, and that the standard for 2019, 2020, and 2021 was RMB 8.2/day/terminal for the Shaanxi region.In its application, the Association clearly stated that the "base amount" was calculated as "standard/room/day x number of rooms x number of days of infringement". The court accepted the aforementioned calculation method, and on its basis, taking into account the impact of the new crown epidemic on the industry, slightly adjusted the standard downward, through the determination of royalties to clarify the calculation of the "base figure". In the case of "Little Yellow Man", the plaintiff, in order to prove its loss, provided the product licence agreement, which agreed that the standard of the licence fee is 4%-5% of the annual net invoice of the product, from the evidence submitted by the plaintiff, the licence fee is not less than 3.2 million yuan, and the Suzhou Intermediate People's Court ultimately approved the licence fee.

Typically, the court determines the infringement profit based on "unit price of sales * quantity of sales" or "unit price of profit * quantity of sales". However, there is an unsolvable problem of reasonableness. Do all the sales or profits of the product come from the copyright on the product? The answer is obviously no, because there is the cost of production of the product itself, the court will often take a discretionary approach to the calculation. Jiangxi province luxi county people's court in the case of the plaintiff to provide the defendant jinduoduo sales records, the comprehensive consideration of the plaintiff's work popularity, the defendant's scale of operation, etc., discretionary to give the "base" for 3,000 yuan.

With regard to the application of the "multiplier", judging from the existing decisions, the judgements often make little mention of why the multiplier is applied, but rather arrive at the amount of punitive damages directly after determining the "base figure". The Intermediate People's Court of Dali Bai Autonomous Prefecture of Yunnan Province, in dealing with the series of disputes of the Association of Audiovisual Works, all the application of a unified discretionary multiplier of 1, without too much elaboration on the reasons for the application.The reason for this is that the application of the multiplier would have required the aforementioned factors of "intentional infringement" and "aggravating circumstances". On the other hand, judges tend to be conservative when hearing such cases, and if a multiplier of more than one is applied, it is likely to exceed the plaintiff's claim. Of course, not all cases are subject to a multiplier of one. The People's Court of Tianhe District, Guangzhou City, Guangdong Province, held that the defendant's placing of audio files of the infringing teaching materials in the allegedly infringing products since 2016 has continued to this day, and the defendant's refusal, upon request, to provide the sales data of the infringing products that it sold through its offline physical shops, was an egregious act, and the court ultimately awarded it two times the amount of punitive damages.

In addition, the practice has also directly ignored the multiplier of punitive damages, using the "total discretion" approach to directly determine the amount of punitive damages in the adjudication method. Jiangxi Province, Shangrao City, Guangxin District People's Court in the Association of the case, through the defendant in the operation of the plaintiff's copyright infringement during the act of the defendant was sentenced to bear the corresponding responsibility, but in the act of infringement was confirmed after the infringement of copyright infringement is still not stopped to determine the application of punitive damages, but for the amount of money, it passes over the discretion of the direct for 8,000 yuan. And the judgement determined that the defendant should be compensated for the amount of 18,000 yuan, the amount of punitive damages lack of discretion for 8,000 yuan. Inexplicably, the range of punitive damages multiplier is between 1-5 times, i.e., at least one times the base of the calculation. Here, the court's discretionary amount was lower than the calculation base, and the decision is questionable.

The practical difficulty in dealing with this is how to judge the application of different multipliers? Neither the Copyright Law nor the Judicial Interpretation of Punitive Damages gives a clear path of guidance. On the contrary, judges are given greater discretion to make judgements based on factors such as the subjective fault of the defendant and the severity of the infringement. Apart from the duplication with "intentional infringement" and "aggravating circumstances", there is a lack of clear legal norms to guide the application of the multiplier. If the "base amount" is the focus of punitive damages, then the "multiplier" is the most important aspect of punitive damages. This is not only because of the huge difference between different multiples, but also because multiples affect the effectiveness of punitive damages: too high a multiplier may result in a claim being exceeded, while too low a multiplier will not achieve a punitive, deterrent effect.

3. Jurisprudential Analysis: Theoretical Reflection on Punitive Damages for Copyrights

At present, the system of punitive damages is fully covered in the field of intellectual property. The basis for the

application of punitive damages in the field of copyright is derived from the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code), the Copyright Law, the Regulations for the Implementation of the Copyright Law of the People's Republic of China (hereinafter referred to as the Regulations for the Implementation of the Copyright Law), and the Judicial Explanations on Punitive Damages. Generally speaking, the basis for the application of punitive damages has been established in various legal norms, forming a normative form of "principle-specific", but there are still ambiguities in the specific application of the provisions, leading to difficulties in application.

3.1. Provisions of Principle: Target Values of the Civil Code, Copyright Act

The Civil Code, as a superior, general law, is principled in its legislative provisions. At the macro level: in the field of intellectual property rights, in the event of intentional infringement under serious circumstances, the right holder has the right to request punitive damages. The objective of this provision of the Civil Code is to formalise the system of punitive damages in the field of intellectual property. At the same time, the Civil Code specifically states that where special provisions exist in other sectoral laws, they are to be followed.

In terms of liability, punitive damages are the most severe form of civil liability. From the point of view of the attributes of rights, civil law gives intellectual property rights the attributes of private rights, but it still involves the public interest, therefore, its protection should be both public and private law. From the level of private law, in the civil field of punitive damages system, based on the two parties involved in the case of the subject belongs to the relationship of equal civil law subjects, punitive damages of the "compensation property" to fill the infringed due to infringement of the damage suffered by the consequences;[7]From the perspective of public law, from the point of view of punishment, by giving the infringer a high financial penalty, the infringer will be warned, and at the same time can also warn others to prevent the occurrence of such offences, in order to safeguard the public interest of society.[8]

From the legislative formulation, the Civil Code, through its general provisions, restricts the application of punitive damages to cases of intentional infringement resulting in aggravated circumstances. In this case, the right holder is entitled to request the application of punitive damages. The principle of the aforementioned provisions for the specific application of the larger space left, how for the circumstances of seriousness? How to calculate punitive damages? This is not reflected in the Civil Code as a general provision, and needs to be guided by specific provisions in other sectoral laws.[9]

The Copyright Law, as a sectoral law, stipulates at a specific level that in case of intentional infringement + aggravating circumstances, the right holder may request punitive damages ranging from 1 to 5 times the base amount of compensation. On the basis of the punitive damages of the Civil Code, the Copyright Law refines the calculation of the amount of compensation. Punitive damages under the Copyright Law are calculated as follows: base amount x multiplier. The base amount is determined in accordance with the actual loss of the right holder, the benefit gained by the infringer, the licence fee or the amount of statutory damages, and the multiplier is determined in accordance with a reasonable range of 1 to 5 times.

As a result, statutory damages can be used in conjunction with punitive damages. However, there are two problems with this article. On the one hand, the article has no specific detailed explanation of "intentional" infringement and "aggravating circumstances", which leads to the direct application of a large space for interpretation. If it is not refined, to the judge to bring the strict obligation of reasoning at the same time also gives the judge greater discretionary space, may lead to punitive damages abuse.[10] On the other hand, the article does not provide for the application of 1-5 times. This leads to the problem that the difference in the multiplier can result in a huge difference in the amount of compensation.[11] Assuming that the amount determined by the basis of calculation is $500,000, the difference between the application of 1x and 5x is $2 million. When the court applies punitive damages, it lacks a basis for application of the multiplier and can only leave it to the judge's discretion in the light of the circumstances of the case. Currently, there are no cases in the field of copyright in which five times the punitive damages have been directly applied, and in cases where punitive damages have been applied, the People's Courts generally apply a multiplier of between 1 and 2 times the amount of damages, and there is a lack of a basis for the application of a multiplier for punitive damages in practice.

3.2. Specificity of Application: Shortcomings of the Regulations for the Implementation of the Copyright Law and the Judicial Interpretation of Punitive Damages

Firstly, legislation is missing. The logic of legislation should be from "general to specific" and "abstract principle to specific application". The Civil Code, the Copyright Law through the "general", "abstract principles" provisions, to give justification for punitive damages. The specific application of these provisions needs to be refined by the laws and regulations and judicial interpretations that accompany them. The supporting legal norms of the Copyright Law include the Implementing Rules of the Copyright Law and the Judicial Interpretation of Punitive Damages. The current Implementing Rules of the Copyright Law were issued on 30 January 2013 and came into effect on 1 March 2013. At that time, the Copyright Law did not introduce a punitive damages system, and thus the Implementing Rules of the Copyright Law lacked specific provisions on the application of punitive damages, including an explanation of aggravating circumstances and the application of multipliers. The Copyright Law (2020 Amendment) was published on 11 November 2020 and implemented on 1 June 2021, three years after its implementation. It has been three years since its implementation, and the Implementing Rules of the Copyright Law have not been amended to follow the amendment of the Copyright Law so far. This has resulted in the absence of supporting legislation on punitive damages at the level of specific application. The consequence of this is not only the lack of legislation on punitive damages from the legal system, the logical structure is not rigorous enough; at the same time, it will also cause irregularities in the application of the law. In the existing practice, when judges make decisions, they often directly invoke the Copyright Law and the Judicial Interpretation of Punitive Damages.

Secondly, the interpretation is ambiguous. First, the intersection of subjective and objective elements. In the typical cases listed in the Judicial Interpretation of Punitive

Damages, there are examples of crossover, such as in the determination of "subjective intent", which involves the determination of "aggravating circumstances"; in the determination of "aggravating circumstances", there is also crossover between some considerations and "subjective intent", and the two are not specifically divided. For example, in determining "subjective intent", the determination of "aggravating circumstances" may involve the determination of "means"; in determining "aggravating circumstances", some of the factors to be taken into account and "subjective intent" may also intersect, and the division between them is not particularly clear. Thus, is it necessary to "intentional infringement" and "aggravating circumstances" as subjective and objective elements respectively? In this paper, the practical application, there is no need to split "intentional infringement" and "aggravating circumstances". Avoid cross repetition at the same time, also do not need to give the judge too much burden of reasoning. Second, the multiplier application conditions are not clear. The Judicial Interpretation of Punitive Damages only briefly mentions that the selection of multiplier should be considered according to the subjective fault and the severity of the circumstances. The foregoing provision is too broad to give specific guidelines. In addition, should the multiplier for punitive damages be a whole number? This is not mentioned in the Judicial Interpretation of Punitive Damages. Thirdly, the scope of the subject of the request is uncertain. The Civil Code provides that "right holders" are entitled to request punitive damages. However, neither the Copyright Law nor the Judicial Interpretation on Punitive Damages explains the scope of "right holders". Does the right holder in this context include the licensee or the copyright collective management organisation?

4. Optimisation Path: Legislative and Judicial Improvement of Punitive Damages for Copyright Infringement

In recent years, the goal of introducing a system of punitive damages, as called for by various parties under the legal system of the Civil Code, has been realised.[12] As early as 2013, when the Trademark Law was amended, punitive damages were first directly stipulated therein. Subsequently, the publication of the Civil Code, the amendments to the Copyright Law, the Patent Law, and the Judicial Interpretation of Punitive Damages have led to a wider coverage of the punitive damages system. The application of punitive damages in the field of copyright, with the support of the Civil Code and the application guidelines of the Judicial Interpretation of Punitive Damages, the legitimacy, legality and reasonableness of the application of punitive damages have a jurisprudential basis. However, the foregoing analysis can be seen in the legislation and justice, punitive damages system can still be improved.

4.1. Supplementary Legislation: Improvement of the Enforcement Rules of the Copyright Law and Judicial Interpretation of Punitive Damages

With regard to the improvement of the Enforcement Rules of the Copyright Law, the current Enforcement Rules of the Copyright Law lack provisions on punitive damages, and it is hoped that when they are revised, they will be included to regulate the system of punitive damages. At present, what is lacking in the Implementing Rules of the Copyright Law is a set of provisions on punitive damages. In this paper, we believe that the provisions of the Civil Code and the Copyright Law are already in place, and the Implementing Rules of the Copyright Law do not need to repeat them. Instead, the focus should be on the supplementary explanation of the relevant ambiguous concepts.

The scope of the subject of the request needs to be clarified. In the case of punitive damages, the "right holder" may claim punitive damages. The "original" right holder, i.e. the copyright holder, can certainly bring an action. But are other rights holders included? This article argues that it needs to be consistent with the right to sue for intellectual property rights. According to the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Trademark Civil Disputes, an exclusive licensee may sue individually, an exclusive licensee may sue jointly or in the event that the original right holder fails to do so, and a general licensee may sue with the authorisation of the original right holder. Punitive damages, as one of the claims, should be consistent with the right to sue. At the same time, it is also necessary to clarify the court of jurisdiction. According to the Supreme People's Court's Circular on the Issuance of Standards for the Jurisdiction of Basic People's Courts over First Instance Intellectual Property Civil and Administrative Cases, some basic courts have jurisdiction over intellectual property cases. However, cases of punitive damages involve a heavier burden of responsibility, involving not only the complex determination of constituent elements, but also the calculation of the amount of money, and it is not recommended that they be under the jurisdiction of the Basic Level Courts.

On the "punitive damages judicial interpretation" of the improvement, first, do not have to split "intentional infringement" and "aggravating circumstances", can be combined and overall summary. Constitutes "intentional infringement" and "aggravating circumstances" of the main factors are: (1) well-known, in order to industry and outside the industry as a whole to judge. If constitute well-known, it can be inferred that the infringer subjectively has greater intention. (2) specific relationship, whether the infringer and the right holder there is "identity relationship" and "cooperative relationship" as the judgement standard, identity relationship includes: directors, supervisors, senior management, core employees, etc.; "cooperative relationship Identity relationship includes: directors, supervisors, executives, core employees, etc.; "cooperation relationship" includes: licensing, distribution, agency, representative, etc. The reason for this generalisation is that under a specific relationship, the perpetrator is more aware of the rights in question compared to the general public, and from this, it can be presumed that the intention is greater. (3) Repeated infringement, including the rights holder after the notification of continued infringement or administrative penalties, civil judgement, and still continue to infringe. In this case, the perpetrator has been aware of their own infringement, not only do not stop the infringement, the other way round, enough to prove that their behaviour is bad. (4) has constituted a crime, if the perpetrator's infringement has constituted a crime, there is no doubt that its subjective and objective viciousness. In addition to criminal liability, can also be used as one of the considerations of punitive damages.

(5) infringement of time and scope, this paper thought, if the duration of infringement more than three years, the scope of the place more than three, can be used as a factor for examination. (6) Special areas, such as endangering national security or human security, such behaviour is more harmful, once the consequences are serious, so it will be included in the scope of consideration of punitive damages. (7) Other serious factors, as an underpinning clause.

Secondly, with regard to the specific calculation of the amount of punitive damages, it can be broken down specifically in terms of the basis for calculation and the multiplier for calculation. For the amount of punitive damages calculation basis, more detailed guidance can be given to the calculation method. For the losses of the right holder and the benefits gained from the infringement, the following aspects can be considered: (1) the product of the reduction in the sales of the right holder's goods or the sales of the infringing goods and the profit per unit of the right holder's goods; (2) the number of decreases in the price of the right holder's goods and the product of the profit per unit of the right holder's goods and the number of sales of the goods; (3) the loss of the right holder due to the decrease in the number of users; (4) the research and development costs actually spent by the right holder for the intellectual property rights he/she is claiming for (4) the research and development costs actually incurred by the right holder for the intellectual property rights it seeks to protect; (5) the reasonable advertising costs actually incurred by the right holder to repair its goodwill. In addition, if the right holder is able to provide a similar licence contract, the costs of the licence contract may be extrapolated.

Thirdly, with regard to the multiplier applicable to punitive damages, there is a need to refine the conditions for their application. The multiplier of punitive damages is directly related to the amount of compensation. However, at present, neither the Civil Code, the Copyright Law nor the Judicial Interpretation of Punitive Damages give clear guidelines. Article 6 of the Judicial Interpretation of Punitive Damages only emphasises that when the People's Court determines the multiplier of punitive damages according to the law, it shall take into account the degree of the defendant's subjective fault, and the severity of the infringement. But how many times should be applied, the judge's discretion is too great. In order to facilitate the judicial application, limit the abuse of discretion, try to infringement of the circumstances, apply in stages. Firstly, the infringement circumstances are divided into serious, relatively serious and particularly serious. When it is serious, 1-2 times; when it is more serious, 3-4 times; when it is particularly serious, 5 times. It should be noted that it is not entirely necessary to have a whole number of times, for example, 1.5 times is applied in accordance with the norms.

4.2. Judicial Empowerment: Explaining The Law Through Cases and Giving Play to the Guiding and Reference Role of Cases

From the judicial data after the formal establishment of the punitive damages system, on the one hand, the proportion of cases in which the plaintiffs claimed punitive damages was relatively low, and the concept of punitive damages was relatively vague; on the other hand, from the cases in which punitive damages were claimed, the support rate was less than 1 per cent. At present, there is an urgent need to "explain the law by cases" and issue guiding cases on punitive damages in the field of copyright, so that judges can correctly and accurately apply the punitive damages system.

Firstly，(c) To fulfil the role of guiding cases. The Supreme People's Court mentioned at the press Q&A session of the Judicial Interpretation of Punitive Damages that it would soon release typical cases of punitive damages for intellectual property rights, so as to further accurately grasp the meaning of the provisions of the Judicial Interpretation of Punitive Damages. [13] The meaning of the guiding cases is self-evident, not only to help judges to hear the cases, but also for the legal professional community to better understand and apply punitive damages has a positive role in promoting. The significance of the guiding case is that, for similar cases, has a "mandatory" guidance. In practice, the existing guiding cases are concentrated in other areas, such as trademark law, patent law, etc. But in the field of copyright law, there is a lack of guiding cases. But in the field of copyright law, there is a lack of guiding case support. For example, if there is a guiding case for the Association for the Protection of Audiovisual Works (APA) series of cases, then there can be clearer guidelines for the defence of rights and adjudication of the cases, which will facilitate the judges to hear the cases in an efficient manner. Therefore, it is necessary to summarise the practice cases as soon as possible, and then introduce guiding cases to guide the determination of "intentional infringement" and "aggravating circumstances" in the application of punitive damages for copyright, and to refer to the calculation of the amount of money.

Secondly, On 27 February 2024, the Supreme People's Court (SPC) launched the "People's Court Case Database" on its official website, to screen guiding and reference cases of a uniform scale, so as to make the management of litigation sources more efficient.[14] Currently, in the case library to "punitive damages" as a keyword, can retrieve 8 reference cases, covering patent disputes, plant variety rights disputes. From the effectiveness point of view, although the cases do not have the mandatory effect in the legal sense, but they have a relative sense of persuasion. The persuasive power of the reference cases is obviously lower than that of the guiding cases, but the guiding cases are not exhaustive, and they need a lot of summarising and refining. And reference cases have typical significance, for a certain type or a case has an important reference value. As mentioned earlier, if it cannot be used as a guiding case, or as a reference case, for the future occurrence of this type of case has a greater reference value. Because from the quantitative point of view, this type of case is not accidental, there are more situations in practice. Thus, the value of reference cases is reflected in the accurate application of punitive damages to help this type of cases, to avoid "the same case different judgements" and irregularities in the decision.

5. Conclusion

With the rise of knowledge-based economy, copyright, as a part of intellectual property rights, is increasingly receiving wide attention from all walks of life. And the development of Internet technology and digitalisation has led to repeated infringement of copyright, bringing huge economic losses and spiritual damage to copyright owners. At this time, the punitive damages system came into being. From the perspective of practice, the punitive damages system in the copyright law has achieved certain results in combating infringement, but also exposed some problems, such as the

calculation standard of the amount of compensation is not clear enough, and the determination of the compensation multiplier is subjective. From a theoretical point of view, the balance between compensation and punishment needs to be carefully thought out to avoid the problem of improper application. Based on this, it is necessary to continuously improve the system design, strengthen the theoretical research and practical exploration, promote the optimisation and development of the punitive damages system for copyright infringement, and contribute to the construction of a more perfect copyright protection system.

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