

Discussion on Human Rights Protection and State Obligations Against the Copyright System in the Internet Age

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Abstract—In the era of knowledge economy, copyright not only has strong economic attributes, but also has strong human rights implications. The advent of the Internet era not only requires the state to resolutely fulfill people's human rights protection obligations, but also to guarantee the change and transformation of its protection methods and implementation approaches. That is, in the design of the modern copyright system, it is necessary for the state to properly construct the distribution space of the copyright and public domains. It is also necessary to balance the appropriate proportion of private and public interests under the copyright system, while taking into account the harmonious development of personal immediate interests and long-term human interests.

Keywords: *copyright, human rights, positive obligation*

I. INTRODUCTION

Under the era of current highly developed human civilization, the legal protection of intellectual property rights has broken through the traditional recognition and protection of private rights, and has gradually sought human rights consensus and human rights protection at the national and international levels. As early as November 1998, the World Intellectual Property Organization and the United Nations High Commissioner for Human Rights jointly held the first seminar on the subject of "Intellectual Property and Human Rights". From the "American Declaration of Human Rights and Duties" to the three human rights conventions of United Nations, they all endow intellectual property rights with human rights. Intellectual property rights, as human rights, contain two aspects, one is the rights of creators to their own intellectual achievements, and the other is the right of the public to share the benefits of intellectual creative activities. It can be seen that there are always two aspects of the protection of intellectual property monopoly and the reasonable sharing of intellectual property interests in the intellectual property system. It is also necessary to relieve the inherent tension between the two to achieve a balance. The trend of the development of the times has continuously eased the conflict between the two in order to achieve a balanced interest. To some extent, this must be achieved by promulgating general rules that evaluate the importance of

various interests and provide adjustments to such conflicting standards of interest." [1] The state is an important subject of human rights protection. The protection of human rights of intellectual property rights requires the formation of a long-term and stable protection mechanism through national legislation, and it is even more necessary for the state to continuously mitigate the gap between the two in the design of the intellectual property system in accordance with the trend of the times to reduce the conflicts and hence to achieve a balanced interest.

II. THE HUMAN RIGHTS PROPERTIES OF THE COPYRIGHT SYSTEM

Copyright is an important part of the intellectual property system, and the human rights properties of copyright have long been generally recognized by the international community. As early as 1948, Article 13 of the American Declaration of Human Rights and Duties adopted by the Organization of American States stipulated the "right to cultural welfare", which states: "everyone has the right to participate in social and cultural life, appreciate art, and share knowledge and progress, especially the benefit derived from scientific discovery." Similarly, there is a right of protection of spiritual and material benefits arising from his invention or any scientific, literary or artistic work created by him. "Since then, the 'Universal Declaration of Human Rights' in 1848 Articles 27, 'Convention on Civil and Political Rights' Article 19 in 1966, and 'Convention on Economic, Social and Cultural Rights' Article 15 all explained the human rights content of copyright."

Judging from the historical evolution of human society, human rights have become a unique place for people who exist as "classes" to distinguish themselves from other non-humans. The existence of such "classes" of human beings is reflected in the extensive "richness" and "comprehensiveness" in specific space-time fields. The actual individual in a specific context of living space will generate "class" belonging and emotional dependence. It will produce the anxiety emotion of the self as an individual, and also the emotion of compassion and concern for other individuals as "kindness". Human beings will express and

carry their own spiritual existence on a material carrier such as literary and artistic works, and carry out continuous spiritual production based on this. The ultimate significance of the human rights implication of the copyright system lies in the human spiritual existence and spirit to respect and guarantee the sexual production. However, the more prominent significance of the spiritual production of a commodity society lies in the respect and affirmation of the economic value of intellectual achievements. In this regard, British thinker Locke's "labor theory of value", based on the theory of natural rights, endows property ownership with attributes and values for intellectual property, including copyright system, just as Sanders points out: "Locke's principle of property rights provides a natural basis for the principle of copyright, which justifies the author, or the publisher as the rightful owner of the property in the work." [2] At the same time, Locke's theory of natural rights also raised copyright to the level of human rights. "Firstly, the theory of natural right advocates a kind of right essence, which becomes the cornerstone of property individualism and absolute thought of ownership; secondly, the theory of labor value finds the rational basis for property right and determines the core value of social development; thirdly, it expands the personality right (creation is the expansion of one's own personality), and makes the property right have the human rights foundation." [3]

III. NEGATIVE OBLIGATIONS: HUMAN RIGHTS PROTECTION IN TRADITIONAL COPYRIGHT SYSTEMS

The "Queen Anna Law" is the earliest copyright protection law in the world. This law transforms the moral sentiment of "protecting creators" into a realistic institutional design. Prior to this, whether it was the medieval Roman convents that made copies and exchanges of books based on their monopoly on knowledge as a means to exchange their property, or the interests of the royal family and publishers at the beginning of the invention and application of printing conspired to make books copying as a privilege has made the author and his interests the most protected subject of the copyright system. Only when this law was promulgated in 1710 did the copyright cease to be exclusive to members of the bookseller company. From the full name of this law, "To encourage the creation of knowledge and grant authors and purchasers, The Law on the Rights of Printed Books in a Certain Period", it is known that protecting the rights of authors is the original intention of its legislation. Therefore, the preamble of the law clearly states that the main purpose of the legislation is to prevent printers from printing, reprinting or publishing the author's work without the author's consent, in order to encourage learned and knowledgeable people to create works that are beneficial to society.

"Interest is the internal driving force for the formation and development of the social norm of law, and the function and value of law lies in defining, confirming and distributing the interests of different subjects and different levels, confirming and guaranteeing the stable social order by judging and adjusting the relations of interests." [4] The

formulation of Queen Anna's Law reversed the monopoly of the publisher's interests and finally realized the balance between the publisher and the author's interests: the author's intellectual achievements were the direct source of his gains, and after the publisher had copied them and put them on the market, he got the money proceeds, then distributed the market proceeds between the publisher and the author, and the way of distribution was the copyright contract. This law basically set the tone of the system protected by the copyright law at that time, and controlled the distribution of the interests of the publishing industry by regulating the reproduction of works. Therefore, the right of reproduction became the most important, basic and universal right in the copyright system. That is to say, in the printing era, the copyright owner and publisher connected by the copying activity are the basic interest subjects in the copyright legal system, and the publishing contract has become the basic tool and link for the distribution and adjustment of the interests of the two. As for the issue of contract formation, contract content, legal liability and other issues of publishing, that is, the benefit distribution plan between the copyright owner and the publisher completely left to the "meaning autonomy" between the parties. In other words, the obligation of the state to fulfill copyright protection in the printing era is mainly a negative obligation, that is, an obligation to be free from interference. This is clearly stated in Article 14 of the "Copyright Convention" concluded by the World Intellectual Property Organization in December 1996: "contracting parties shall ensure that enforcement procedures are available in accordance with their laws in order to take action against any rights that are covered by this treaty. Effective actions for violations include rapid remedies to prevent infringements and remedies to curb further infringements." At this time, the main role of the state's negative obligation is to ensure that the copying of the work is carried out according to law, and to protect the copyright of the work from third parties. Through the fulfillment of the country's negative obligations, the intellectual creative activities embodied in the works are affirmed, the personal interests and economic value of the works are guaranteed, and the author's creative activities are respected and encouraged on this basis, so as to fully motivate the copyright system.

IV. CHALLENGES TO COPYRIGHT PROTECTION IN THE INTERNET AGE

With the massive increase in book publishing and the widespread dissemination of knowledge, the public's interest in book publishing activities has gradually become an important factor to be considered in the evolution of the copyright system, and the modern copyright system has adopted the copyright fair use system and the rights exhaustion system. The copyright term system has achieved a good balance of the interests of copyright owners, publishers and the public. From the printing era to the Internet era, the interest subject covered by the copyright system has a tendency to diversify, and the relationship between the interest subjects has become crisscrossed. As a

result, the institutional design of the copyright law in the Internet era needs to create a new kind of interest balance.

To a certain extent, the copyright system is the product of a balance of interests. Previously, the control of interests was mainly the control and domination of the reproduction of works. Therefore, traditional copyright law used the right of reproduction as its foundation and core, and constructed the system with the right of reproduction as the center. The development of the copyright system in the printing era can basically include the reproduction of works in various forms and ways. According to the provisions of China's "Copyright", the right of reproduction refers to the use of printing, copying, overprinting, recording, video, remake, etc. and the right to make one or more copies of a work. Japan and South Korea's copyright laws have made similar provisions. "Because copyright is a right of copying, once a new copying method is developed, the content of its rights will also change." [5] The copying of works in the network environment is completely different from the traditional copying behavior, which has greatly changed the material basis of the copyright system. In response to this, the white paper published by the United States in September 1995 proposed the concept of "distribution right", while the European Union proposed the concept of "dissemination right to the public", which is intended to reflect the copyright owners' control of transmitting works online. The carrier of works in the Internet era has changed, and the channel for the public to acquire knowledge has also become a visitor's browsing, reading, viewing, listening, and even downloading through the transmission of the network. The dissemination restricts the access of the public to the resource and controls the copyright owner economic benefits. As a result, the object of control of modern copyright law has shifted from copying to dissemination, but behind this shift is the change and reorganization of new interest relationships in the copyright system. The traditional institutional arrangement of copyright is to achieve a balance of interests among authors, publishers, and the public and always regard it as a development goal. For example, Article 7 of the "Agreement on Trade-Related Aspects of Intellectual Property Rights" (TRIPS Agreement) clearly specifies its objectives: to promote the transfer and dissemination of technology, to promote social welfare, and to balance the interests of creators and users of intellectual property rights. But in the Internet era, this kind of interest balance is broken, the original interest structure is undergoing differentiation and reorganization, the diversification of interest subjects, the complication of interest objects, and the expansion of rights all make the interest balance mechanism sets shocked by the copyright system under intense pressure.

V. POSITIVE OBLIGATIONS: CHANGES IN STATE OBLIGATIONS IN COPYRIGHT PROTECTION IN THE INTERNET AGE

The Internet era has created a digital network environment, which has shifted the focus of the copyright system from copying to dissemination, and the copyright owner is able to obtain economic benefits by controlling the

transmission of works. However, the control of communication in cyberspace is extremely complicated and difficult. In addition to the technical factors of the network environment, the most complicated thing is the personal benefits enjoyed by copyright owners based on intellectual property rights and the public based on knowledge acquisition and sharing and balance of public interest.

In the institutional space of copyright law, the private space of intellectual property follows the values of civil law, sacred private rights, and the values of autonomy. It can be respected and protected. However, with the rapid development of science and technology, the spread of copyright works on the Internet has greatly surpassed the era of copying the works in terms of speed and scope, making the attributes of public goods of knowledge products constantly prominent, thus providing a creative activity for the public with great convenience. However, the development trend of modern copyright law shows that the continuous expansion of the subject of copyright has continuously eroded and plundered the territory of the public domain. The free access to information and reasonable use of space by the public in the space of the copyright system is facing huge threats. The original balance of public interest is broken. Therefore, in order to return to the equilibrium state of the copyright system, the state needs to change its role positioning from traditional, passive negative obligations to modern, active positive obligations. Countries cannot and are impossible to obey copyright owners to set obstacles in the development of continuous human innovation in accordance with the principle of autonomy of the will in the Internet age, nor can they allow the intentional expansion of copyright to gradually occupy and reduce the scope of the public domain. Only by this can make the copyright system "really achieve ecological harmony with the public domain and enable a way to ensure the circulation of knowledge to lead and promote the sustainable development of human culture." [6] [7]

The positive obligation in the copyright system in the Internet era is the commissioning and transformation of the country's own human rights protection obligations in the process of gradually moving to the digital age. The premise of the fulfillment of the positive obligation first requires the state to develop from human culture in its national strategy of intellectual property. The long-term vision clarifies the existence of the public domain in the space of the copyright system and its important value. The public domain in copyright law is the source of development for the free creation of human culture. The ultimate purpose of copyright is to promote knowledge. Authors' rights can only be recognized when this purpose is promoted. The public interest is paramount. In the design of the modern copyright system, the state needs to reasonably construct the distribution space of the copyright field and the public field, the state needs to properly balance the appropriate proportion of private and public interests in the copyright system, and the state needs to take into account the harmonious development of personal immediate interests and long-term human interests. Specifically, the private and public spheres coexist in the contradictory unity of copyright law, and the

dominance of the two is the conflicts among private nature of copyright and its private interests and the social and cultural properties of works and its public interests. The private nature of copyright and the expansion of its rights make this conflict impossible to resolve through the self-negotiation and interactive games of different subjects, and it is urgent for the state to act as a representative of the public interest to take active means and measures to resist the expanding copyright and hence prevents the living space of public knowledge and intellectual commons from being constantly squeezed and occupied, in order to guarantee and promote the enrichment and development of the public domain. Only in this way can the knowledge and experience in literary and artistic works be widely shared, and the information in cultural heritage be transmitted and continued, so as to promote the sharing of knowledge and the integration of concepts, and thus promote the production of knowledge and cultural progress. Based on the unique value of the public domain in the copyright system, the state must face up to the past, present, and future of human society and culture, so as to fulfill its social responsibility and historical mission of maintaining public interests and ensuring cultural continuity.

VI. CONCLUSION

With the advent of the rule of law, copyright should be regarded not only as a property right that reflects important interests, but also as a human rights system that concerns human civilization and the progress of the times. Therefore, a country that is the subject of human rights protection must expand its horizons to the past, present, and future of human social and cultural life, confront with and cherish the unique value of the copyright system in the public domain, and complete the interests balance and system design to fulfill its social responsibility and historical mission of maintaining the public interest and ensuring cultural continuity.

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