

Research on the Administrative Protection of Copyright in my Country

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ABSTRACT

My country adopts a two-track system of judicial protection and administrative protection. But for some scholars to dispute the administrative protection, further discussion is needed. We should clarify the nature of administrative protection and the inevitability of its establishment, so as to explore the fundamental way to solve the problem and build a perfect copyright protection system.

Keywords: *copyright, administrative protection, judicial protection*

1. INTRODUCTION

The administrative protection of copyright is that under the premise of following the statutory procedures and applying statutory administrative means, the national intellectual property administrative authority handles various intellectual property disputes according to law, maintains the order of intellectual property rights and raises awareness of intellectual property social protection, and uses administrative power and means to deal with Intellectual property rights to achieve legal protection¹. My country currently adopts a dual protection system with administrative protection and judicial protection to protect the rights and interests of rights holders. The current status of the protection system is in line with my country's national conditions and objective actual conditions, is conducive to the construction of a complete copyright protection system, and has a profound impact on the protection of copyright. Since copyright is a private right, many scholars believe that administrative protection, as a means of protecting public power, should limit it. Judicial protection should be the mainstay and administrative protection should be supplemented. Administrative intervention in the copyright market should be weakened. The author supports the dual protection system of administrative protection and judicial protection at the same time, affirming the contribution of administrative protection to the protection of rights and interests. However, for some scholars who dispute the administrative protection due to the private law nature of copyright, further discussion is needed to explore the solution to the problem. The fundamental way is to build a perfect copyright protection system.

2. THE STATUS OF COPYRIGHT ADMINISTRATIVE PROTECTION IN MY COUNTRY

In the 2012 Copyright Law Amendment Draft, the rights and protection means of administrative agencies were increased, which also reflects the importance and further strengthening of the country's copyright administrative protection. Moderate intervention can prevent the failure of the copyright market, is more conducive to supporting innovation, and also allows the public to benefit more widely². However, the dispute over the administrative protection of copyright has never stopped. The core of the dispute is the conflict between the private rights of copyright and the public power of administrative protection. Although scholars all recognize the advantages of professional protection of administrative protection, such as efficiently and accurately combating infringement, reducing the cost of rights protection, and improving the efficiency of rights protection. But the restrictions on market freedom brought about by the expansion of public power and the imperfections of administrative protection itself still have some problems. All the stubbornness. Copyright administrative protection is often accompanied by problems such as anomie in execution, confusion of law enforcement subjects, unclear procedures, etc., which undermines the expected stability and formal rationality of the rule of law, and doubts about governance performance³.

My country has set up national and local copyright management organizations and professional and efficient copyright administrative protection law enforcement systems in administrative management institutions. In practice, my country often restricts administrative protection in various aspects due to the conflict between

public power and private rights, and prefers judicial protection. This is scientifically feasible, but from a practical perspective, it has not achieved perfect results. Therefore, the author believes that we should pay attention to the independence of administrative protection, maximize its value, and contribute to the improvement of the intellectual property protection system.

IP infringement cases
(As of July 6, 2017)

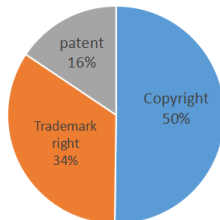


Figure1 Proportion of various types of infringement cases in intellectual property infringement cases

3. FEATURES OF COPYRIGHT ADMINISTRATIVE PROTECTION

3.1. The staff is highly professional.

The protection of copyright requires professionals to have more knowledge in copyright as a foundation and foundation, not just legal professionals can rely on legal knowledge to solve. Judicial protection is mainly based on judges, and its legal expertise is rich. But there is a lack of expertise and experience in copyright. The main body of administrative protection is the staff of the copyright administrative supervision and management department. Their professionalism in copyright is higher than that of judges, and their experience is more abundant. They have a greater advantage in dealing with related issues.

3.2. The efficiency of the rights protection process is high and the cost is low

Copyright administrative protection is proactive relative to judicial protection. The administrative protection of copyright is divided into two situations. On the one hand, infringements are investigated and dealt with in accordance with the complaints and reports of right holders. Article 13 of the "Implementation Measures for Copyright Administrative Punishment" stipulates: "The copyright administrative department shall decide whether to accept and notify the complainant within 15 days from the date of receiving all complaint materials. If it is not accepted, the reasons shall be notified in writing." This provision appears to be an administrative act of copyright on the surface. However, the application of the parties is not a form of act, it is only an administrative review and does not of course constitute an administrative act of application.

On the other hand, the administrative organs take the initiative to discover the actions of infringement and violation of law and act in accordance with their powers. They do not require the right holder to apply. And they take action according to the work plan they have developed, and they have strong autonomy. To sum up, it can be seen that although there are two cases of copyright administrative protection. In the final analysis, it can be concluded that copyright administrative protection is an administrative act based on power, and the competent authority can take the initiative to exercise it. Judicial protection is often mentioned by the right holders. And the administrative organs are in a passive position, which will result in low efficiency of post-event protection, longer periods, and increased costs.

Compared with the application-based administrative actions of copyright judicial protection, the initiative of copyright administrative protection of administrative actions based on power is more conducive to the improvement of work efficiency. In practice, our citizens' awareness of copyright protection is weak, and it is less likely to seek protection from the judicial department. Secondly, if the right holder seeks judicial protection after the rights and interests are damaged, it is also an afterthought relief, with a lagging feature. Moreover, it will be consumed in terms of time cost, money cost, energy cost, etc. The administrative protection of copyright is different from the post-relief relief of judicial protection. The copyright supervision and management department has taken the initiative to manage and handle the infringement before the right owner made the request for relief. Therefore, administrative protection is more suitable for cost saving than judicial protection.

3.3. The protection method is more effective.

In today's era of rapid development of modern networks, copyright infringements have a greater impact on the infringement of rights holders. Copyright infringements will have several or even dozens of times impact on the right holders in a short period of time. At this time, the method of protection is very important. How to protect the rights and interests of the right holders in a short period of time with legal and reasonable means has become a key issue.

The protection methods of judicial protection are limited to stopping infringement, apology and punitive damages, etc. The procedures of this type of flat compensation are too tedious and the period is long. However, the method of administrative protection of copyright is not limited to the acceptance of these civil responsibilities. The stricter regulations in the compulsory regulations have a more efficient and faster effect on protecting the rights of the rights holders. Due to the speed of network information spreading now, pirated works will cause huge losses to the right holders in just a few seconds. Therefore, the use of copyright administrative protection can effectively stop the infringement in a short time and maintain it at the root cause. The rights and interests of the right holders and the

maintenance of the social and economic order have returned to the right track.

3.4. Take public interest as the value goal

From the point of view of fundamental value, copyright administrative protection and judicial protection are all to safeguard the rights and interests of rights holders and the public order. But there is still a certain difference between the two.

The judicial protection of copyright is to protect the rights and interests of the right holders as the core purpose, and to fill the relief as a protection method, so as to restore or compensate the rights holders for infringement. Its main purpose is to resolve rights disputes between equal subjects and protect their civil rights in accordance with litigation claims of the parties. The value objective of copyright administrative protection is overall. It takes national and social interests as the starting point, and takes the overall and orderly development of the field of intellectual property as the primary purpose, not just the purpose of protecting the legitimate rights and interests of the parties. As the law-enforcement agency managed by the state, the administrative organ manages the country's political, economic and social public affairs in accordance with law. It maintains social economic, material and cultural development, protects citizens' legal property, maintains social order, and guarantees citizens' personal, democratic and other rights. Responsibilities. And the infringement of public interest is the prerequisite for initiating copyright administrative protection. This emphasizes the scope of public interest. Only when the infringement occurs and the public interest is damaged, can the administrative protection be initiated, which makes the core of administrative protection more clear. The purpose is to protect the public interest.

4. MEASURES FOR SYSTEM CONSTRUCTION OF COPYRIGHT ADMINISTRATIVE PROTECTION

Although in theory, copyright administrative protection does have its advantages. The problem of copyright administrative protection focuses on how to effectively use the administrative power to provide protection while at the same time using the complete administrative protection system and law enforcement procedures to achieve the maximum benefit of administrative protection and fair and equitable protection of rights and interests⁴. However, at present, my country's copyright administrative protection has some problems such as irregular administrative execution and unclear enforcement procedures, which makes the value of copyright administrative protection greatly reduced. Therefore, the construction of copyright administrative protection system is indispensable.

4.1. Improve administrative law enforcement ability and fight against illegal and criminal acts

In today's society, the problem of copyright infringement is very serious. With the continuous development of electronic information and the rapid advancement of the Internet, pirated books have been banned and rampant. Therefore, the construction of the administrative law enforcement team is very critical, and the improvement of administrative law enforcement capabilities is imperative. We should formulate administrative procedures, form efficient procedures, implement lawful and lawful enforcement, and establish and optimize a reasonable, integrated, and coordinated intellectual property protection system.

The ability of law enforcement personnel should be continuously improved with the continuous development of society and the update of knowledge. Through learning and understanding of copyright infringement cases in the new era, mastering the experience of cracking down on infringement crimes, combining theory and practice to ensure the efficiency of law enforcement. The current short-term rapid training is not reliable, and an overall training plan and method should be formulated to learn knowledge systematically to improve professional literacy and law enforcement.

4.2. Clarify the scope and boundary of copyright administrative protection and judicial protection, and improve copyright protection legislation

Today, the boundaries of judicial and administrative copyright protection are still unclear. Although my country has already adopted relevant laws and principles such as the Copyright Law and departmental regulations, systematic analysis shows that the two have not been clearly defined. Corresponding provisions should be added to the legislation to further clarify the specific scope of the two. Secondly, in order to further clarify the scope and boundaries of copyright administrative protection and judicial protection, the implementation measures should be specified in administrative regulations and departmental regulations. At the same time, the scope of power of each administrative department within administrative protection should be refined. Clarify the functions and powers of each administrative department, clarify the scope of their responsibilities, and prevent the abuse of administrative power from the root cause.

4.3. Strengthen the construction of law enforcement teams and pay attention to the training of law enforcement personnel

Due to the requirements for specialization and organization of administrative law enforcement, the unified leadership of the central administrative organs can be used to delegate training tasks to various local administrative organs, and do regular supervision, inspection and assessment. The administrative organs in various places conduct regular training for administrative law enforcement personnel, ranging from basic extensive training to specific business training according to the types and specialties of each law enforcement personnel. And regularly conduct case training and analysis, combine theory and practice, traditional teaching and practical teaching, strengthen the emergency and professionalism of law enforcement personnel in the process of law enforcement, improve the level of law enforcement by law enforcement teams.

5. CONCLUSION

For the administrative protection of copyright, a set of effective law enforcement mechanisms and professional law enforcement teams have been formed in China. But the connection with judicial protection needs to be clarified, and the responsibilities and rights of law enforcement personnel need to be divided in detail. For the dual protection system of copyright protection in my country, we should focus on the legislation of administrative protection on the basis of the actual situation, so that in practice, the boundaries between administrative protection and judicial protection are clearly defined, and each has its own duties. Although the government can influence the use of production factors in the market through administrative policies, the market has its own logic to solve the problem, and direct government regulation may not bring better results⁵. Therefore, the administrative protection of copyright is very long. It needs to be explored in practice and further researched in theory, so as to develop China's copyright protection better.

REFERENCES

- [1] Xu Mingxun. On the characteristics of administrative protection of copyright in China [J]. Journal of Law, 2010 (2)
- [2] Mark A. Lemley, "Property, Intellectual Property, and Free Riding", Texas Law, 2005, 83, pp. 1072-1073.
- [3] Wu Yuanyuan: "Incentive Effects and Sport-Based Law Enforcement in a Dual Game Structure-Taking the Perspective of Law and Economics", "French Business Research", Issue 1, 2015.

[4] Wang Yingming. Market economy should pay attention to the administrative protection of intellectual property rights[J]. Publishing and Distribution Research, 2004 (11)

[5] Ronald Coase, "The Problem of Social Cost", Journal of Law and Economics, 1960, 3, p, 18.