

Research on Internet Copyright Protection Mechanism: Based on the Perspective of the Comparison of Chinese and American Legislation

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ABSTRACT

In the Internet information age, the works of individuals have a more convenient and effective way of dissemination, but their copyrights are also more susceptible to infringement. As a major Internet country with 1.011 billion Internet users, China has so far not had a law that specifically stipulates how to deal with online infringements. It is only an act that includes online piracy in the crime of copyright infringement. The benchmark is also the United States, which has an extreme number of netizens, but has already promulgated relevant special laws. Therefore, in order to better provide more professional legal support for copyright owners, China urgently needs to promulgate a special network copyright law. This article uses two research methods, case study and comparative research, to compare the legal systems of China and the United States and explore how China formulates a special law on Internet piracy. The following conclusions are drawn that due to the lack of identification standards, the ambiguity of law enforcement entities, and the differences in the setting of legal responsibilities, China has not clearly defined online infringements in existing laws, and there is no common law that specifically combats online piracy. Therefore, such problems are suggested to be solved in three ways: improving the legislative technique, clarifying the basic right attributes of copyright, and enriching the basis of judicial review.

Keywords: *Internet infringement; China and the U.S. legal system; Copyright protection; Special legislation*

1. INTRODUCTION

With the developments of the Internet, network technology has gradually become a new and unprecedented means for people to obtain various information. But at the same time, this also means that there is a new vacuum field needs us to regulate in Intellectual Property Protection. What is more, more and more legal professionals and ordinary people have already started to pay attention to the problem of online piracy and infringement. For example, the Viacom v. YouTube and Google Case can be said to be the most noted case since the passage of the Digital Millennium Copyright Act.

YouTube is one of the largest video websites in the United States. More than 24 hours of video content is

uploaded on it every minute on average. It is also the hardest hit area for online infringement and piracy, with unauthorized music cover videos and pirated movies at home and abroad emerging in endlessly. In Viacom v. YouTube and Google Case, Viacom collected 100,000 allegedly infringing videos, hoping to obtain 1 billion dollars in infringement damages. However, the US District Court Judge Louis Stanton said that “only knowing that users upload infringing content does not need to bear legal responsibility, and service providers do not need to monitor the content uploaded by users”. Viacom believes that the judgment in this case is a misunderstanding and misjudgment of the Digital Millennium Copyright Act. While other people believe that the judgment in this case is a practice of sec.202 of it.

Comfortingly, after the case, YouTube has developed a piracy detection system. In addition, if individual users are suspected of infringement, they will receive a DMCA counter notification letter as soon as possible. DMCA counter notification letter is usually sent by the copyright owner (or the owner's agent) to the service provider (including Internet service providers such as Comcast, website operators such as eBay, search engines such as Google, web hosts such as GoDaddy or other types of online Site operator) to request the alleged infringer to delete materials that have infringed the copyright. If the notified person confirms that he is not infringing, he can also send a DMCA counter-notification to the service provider. In the next 10-14 days, if the copyright owner does not file a lawsuit, all activities of the alleged infringer will be reopened [1].

It's worth noting that regardless of whether copyright owners have registered their work with the US Copyright Office, they can use the DMCA counter notification letter and removal process. This approach provides an easier and more convenient way for the infringed to defend their rights than litigation.

There is also growing concern in China about online piracy and infringement.

The name "RenRen subtitling group" is a household name in Chinese film and television circles, and has become a channel for many film and TV fans to watch films and TV shows. But on 3 February 2021, the Chinese police in Shanghai officially announced the case of "Renren Film and Television Subtitling Group" infringing on the copyright of film and television works. 14 suspects, led by Liang, were arrested, three companies involved in the case were investigated, 20 mobile phones and 12 computer hosts and servers were seized, and the amount involved was over 10 million yuan. The case is being further investigated. With the investigation of the "RenRen subtitling group", people are reminded to think about how to protect copyright in the Internet era while raising awareness of the rights and interests of the copyright holders.

According to the Shanghai police, as early as September 2020, the police discovered during their work that some people were providing online viewing and offline downloading of suspected infringing films and videos through the website and client of the "Renren Film and TV Subtitles Group". After contacting the relevant copyright owners, the above-mentioned works were not authorized or licensed by the copyright owners. In response, the Shanghai Public Security Bureau's Economic Investigation Headquarters, in conjunction with the Hongkou Public Security Bureau, launched an investigation.

The investigation revealed that since 2018, the suspects, including Liang, had set up several companies, set up and rented servers at home and abroad, developed,

ran and maintained the "Renren Film and TV Subtitles" App and related websites, obtained the source of the film for processing and then uploaded the pirated videos to the public for dissemination and illegal profits [2]. Initially, it was found that the application software of each port contained more than 20,000 movies and TV works (episodes), with more than 8 million registered members.

In their briefing, the Shanghai police revealed that, without the authorization of the copyright holders, the "Renren Film and TV Subtitles Group" obtained the source of the films through downloading from overseas piracy forum websites, hired people to translate and compress the films for a fee of about 400 RMB per part (episode), uploaded them to the App server and disseminated them to the public, and made illegal profits by charging website membership fees, advertising fees and selling mobile hard drives with infringing films and videos.

It is undeniable that the infringers, including the "RenRen subtitling group", have made a good income while infringing on the legitimate rights of copyright owners. It is a clear infringement of copyright to bring a work into the country through informal channels without the consent of the copyright owner, translate the work, post it on the internet and make a profit from it [3].

While some copyright owners take legal action to defend their rights and interests, others are unable to do so in a timely manner due to their limited human and material resources, which gives pirates an opportunity to infringe. China's copyright protection mechanism in the Internet era needs improvement.

2. EXISTING PROBLEMS

2.1 Missing standards

According to U.S. Articles 501 and 506 of Title 17 of the United States Code which are federal regulations, the determination of Internet infringement can be divided into criminal determination and civil determination. In Criminal identification perspective, the perpetrator has deliberately fraudulently or for profit-making purposes, copying or distributing 1 or 1 or more copyrighted works with a total retail value of more than US\$1,000 within any 180 days, including electronic copying or audio tapes; or deliberately spreading Prepare a commercial work and upload the work on the public network. In Civil determination perspective, except for unauthorized copying, distribution, leasing or digital transmission of copyrighted works by the perpetrator, it will be deemed as infringement; any secondary transmission by satellite operators of the performance or display of works embodied in the main transmission can be based on Article 119(a)(5) was sued as a tort [4].

According to China's Criminal Law and Civil Code, the identification methods are also divided into criminal identification and civil identification. In Criminal identification perspective, according to Article 217 of the Criminal Law and the provisions of judicial interpretations, online infringements are determined behaviorally and subjectively as: the perpetrator uses for profit, directly disseminates his work through the Internet without the permission of the copyright owner, or uses others to upload infringing works, and provide paid advertising services on the Internet, directly or indirectly charge fees; or use membership to spread the works of others through the Internet and charge membership fees or other fees [5]. In Civil determination perspective, according to Article 1194 of the Civil Code and Chapter 2 and Chapter 5 of the Copyright Law, the elements that constitute online infringement can be summarized as: the perpetrator knew that the online work was protected by copyright, and then uploaded it to the online platform for dissemination without the copyright owner's permission, and thus earned income [6,7].

In summary, China has certain deficiencies in the identification standards of online piracy. Firstly, from the perspective of criminal identification: the United States has more detailed regulations on the infringer's behavior than China, including the time when the act occurred and the amount of profit. In addition, from the perspective of civil identification: the United States' identification of the infringing subject is more reasonable than China's, and China does not base the subject's infringement on the infringement to make a distinction.

2.2 Differences in law enforcements

As a developed country, the United States has a relatively mature intellectual property protection judicial system. However, in the face of the relatively new field of network intellectual property protection, the United States is still in the stage of groping for perfection. In this context, the SOPA (Stop Online Piracy Act) came into being. The SOPA mainly includes two major clauses. One is "combat online piracy", which mainly stipulates new measures to protect online intellectual property rights; the second is "additional enforcement measures against intellectual property theft", which are aimed at the current US intellectual property criminal legislation to modify [8].

According to the Sec.102 of SOPA, the U.S. Attorney General can initiate a person-to-person lawsuit against the domain name registrant or owner of a foreign infringing website. If the above-mentioned person cannot be found, he can directly initiate a lawsuit against the foreign infringing website. According to the Sec.103, intellectual property owners can issue notices to online payment service providers and online advertising service providers, requesting them to take measures against websites designated in the notice that are dedicated to

stealing American intellectual property. According to the Sec.104, domain name server providers, online search service providers, online advertising service providers, online payment service providers, and domain name registration agencies can also voluntarily take measures to prevent public contact under certain circumstances. A certain website may interrupt the economic connection with a certain website and avoid being sued. In other words, in addition to the traditional way for seeking legal assistance like civil, criminal, and administrative penalties for victims of intellectual property rights, the SOAP Act also encourages more enforcement channels. Compared with the law enforcement of the judicial or administrative departments of the government, the United States encourages the infringed to complete the rights protection by themselves or take the initiative to enforce the law on their own, avoiding litigation, so that judicial remedies are not the only effective means.

However, China prefers to be under the jurisdiction of the judicial or administrative departments. The enforcement of intellectual property rights in China implements a dual-track system of judicial and administrative parallelism. As for China's administrative agencies, there will inevitably be overlapping law enforcement powers. Generally speaking, infringed individuals in China can seek judicial relief from the courts, procuratorates, and public security bureaus. They can also seek judicial relief from the State Intellectual Property Office, Patent Office, Administration for Industry and Commerce, Trademark Office, and even Cultural Affairs Bureau, Press and Publication Bureau, and Copyright Bureau Quality Supervision Bureau, Ministry of Information Industry, China Internet Network Information Center and other departments seek administrative relief. With so many choices, it also means that the protection of the intellectual property rights of the internet has become a particularly formal, procedural, and will not be easily used.

2.3 Differentiated judicial system

2.3.1 Criminal Liability for Internet Copyright in China and the United States

On the whole, the penalties for copyright infringement offences under China's Criminal Law are not very different from those under the US legislation, i.e. free imprisonment, fines or both. However, the US provides for separate penalties for intentional infringement for profit and for non-profit purposes, with the former being punished more severely than the latter [9]. This distinction does not exist in China because the Criminal Law does not provide for the criminalization of intentional infringement for non-profit purposes. Secondly, the US Anti-Electronic Theft Act and the Digital Millennium Copyright Act, among others, both explicitly provide for fines

The fines provided for in China's Criminal Code are abstract fines, without a specific amount, and are more arbitrary.

2.3.2 Civil Liability for Online Copyright in the US and China

Civil compensation is the main form of civil remedy. In China, the Civil Code, the Copyright Law, the Interpretation and other legal norms have made clear provisions on the legal responsibility for infringement of online copyright, liability for compensation and the application of the law. Civil liability The forms of liability include: removal of obstruction, elimination of danger, cessation of infringement, apology and compensation for damages. For the determination and calculation of the amount of compensation for online copyright infringement cases The right holder may choose from the following three ways: firstly, the actual loss suffered by the right holder due to the infringement; secondly, the benefit gained by the infringer due to the infringement; and thirdly, the fixed amount of compensation. The amount of fixed damages may be determined in accordance with the circumstances of the infringement and may exceed RMB 500,000 or 300,000, and may exceed 300,000 if the infringement is intentional and particularly serious, but may not exceed a maximum of RMB 500,000.

In the United States, the method of calculating the amount of compensation for online copyright infringement has become increasingly sophisticated. The US Digital Millennium Copyright Act establishes the fundamental principles that should govern civil remedies for online copyright infringement. In copyright infringement cases, the plaintiff may seek damages from the defendant for the actual loss incurred and the portion of the defendant's profits made as a result of its infringement, while the defendant must bear the portion of the plaintiff's actual loss and the portion of profits made as a result of its infringement, or be liable for statutory damages under the law.

3. CAUSING REASONS

3.1 Differences in legislative models

3.1.1 Completeness of legislation

Although the copyright law of the United States does not define in detail what is called online piracy, it defines both the media used by the perpetrator and the object of communication. In addition, the U.S. copyright law not only specifies in detail the time of online infringement and the number or amount of infringed works, but also distinguishes the nature of the infringer. Whereas, the United States has not made detailed regulations on the

liability for violations of the law, and mainly adopts fines as sanctions [4].

On the contrary, China's copyright law and criminal law list what constitutes infringement, including infringement on the Internet. What is more, the Chinese Criminal Law stipulates that the subjective aspect of the perpetrator must be profit-making, and relevant judicial interpretations have been issued to explain this. Moreover, in addition to fines, China's penalties for online infringements include fixed-term imprisonment for a certain period [5,7].

In conclusion, compared with the United States, China does not define the concept of online piracy in detail, but instead focuses more on the accountability of infringers.

3.1.2 Operability of legal text

The United States has set specific standards for online infringements. For example, Article 506 of the United States Copyright Act stipulates: by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copy righted works, which have a total retail value of more than \$1,000 [4]. For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement. However, for American law belongs to case law, most cases related to online infringement are private prosecution cases. Therefore, the above-mentioned standard basically provides litigation reference for the infringed, and judges or other law enforcement personnel need to refer to relevant cases to make a ruling.

On the other hand, China regards online infringements as a small category of copyright infringements into Article 52 of the Copyright Law and Article 217 and 218 of the Criminal Law. Therefore, when investigating the infringer, it is necessary to analyze the law based on actual conditions. Many websites now place their domain names and servers abroad for the convenience of infringement. However, the infringer is in China in fact and controls the website and obtains income in China. Therefore, the accountability can be divided into the following situations:

A. Directly pursue the civil liability of these websites, such as stopping the infringement or compensating for losses, but the infringer is often not found when civil litigation procedures are initiated.

B. According to the Criminal Law and Criminal Procedure Law, if the crime is committed in China, the Chinese judicial organs have jurisdiction over such crimes. Therefore, it is possible to report the case to the judicial authority based on the actual infringement

situation, which means the judiciary can help the right holder to pursue criminal responsibility against the infringer.

C. After investigating the criminal liability of the infringer through the judicial organs, the investigation into the civil liability is the first method considered in the accountability of the right holder in China [5,7].

To sum up, although the United States has detailed standards for defining online infringements, the operability of the legal provisions is open to question. Although China does not provide for online infringements as a separate provision, it provides a relatively reasonable reference for legal provisions for the investigation of the infringer's legal liability.

3.1.3 Whether to specifically legislate

In order to protect various works from wantonly infringement of copyright in the digital age, the US House of Representatives drafted the Stop Online Piracy Act (SOPA) against online infringements, and the Senate specifically drafted the Protection of Intellectual Property Act (PIPA). The two bills are intended to prohibit American citizens from accessing foreign websites that provide pirated content [10,11]. Otherwise, they prohibit infringer from obtaining financial support from within the United States or using domestic websites as link platforms. Whereas, there are still some controversies between the two bills, and they have not been passed unanimously.

However, China has not issued a separate law to combat Internet piracy, but there are relevant legal provisions in the Criminal Law and Copyright Law, which means that China has not established the crime of infringing on Internet copyright in the law. For example, the crime of copyright infringement in the Criminal Law stipulates that the transmission of pirated resources through the network constitutes one of the crimes of copyright infringement. While, the Copyright Law only uses generalized languages to summarize online infringements [5,7].

Overall, although the United States has drafted a bill specifically to combat online infringements, it is still unanimously passed. Although China has no specific legislation to combat online piracy, existing laws can provide a legal basis for right holders or judicial organs to sanction infringers.

3.2 The basis for setting up the law enforcement supervision mechanism

3.2.1 Differences in the political systems of the United State and China

The differences in the political systems of the two countries will naturally lead to differences in the law

enforcements and supervision mechanisms of the two countries. The core operating principle of the American political system is the separation of powers and checks and balances [12]. First is the separation of powers. The United States divides national power into legislative power, administrative law enforcement power, and judicial power, which are separately exercised by Congress, the President, and the courts. The system of separation of powers makes legislative power, judicial power, and administrative law enforcement power check and balance each other, but it can also easily lead to "veto politics". Therefore, in practice, the operation of political power in the United States relies heavily on the coordination of different branches of power and now Power is increasingly concentrated on the president [12]. It is precisely based on this special political system that the US government formulated the "Joint Strategic Plan". The coordinator of intellectual property enforcement is appointed by the President and is responsible for formulating joint strategic plans and joint implementation mechanisms for national intellectual property enforcement actions to protect intellectual property rights across institutions.

The operating principle of China's political system is coordinated division of labor. In the socialist political system with Chinese characteristics, the Communist Party of China has always been upholding the ruling position of the Communist Party of China; the National People's Congress is the highest organ of state power that owns legislation; the State Council is the highest administrative organ of the state; the Supreme Law and the Supreme Procuratorate exercise judicial power. In practice, due to the extremely wide connotation and scope of intellectual property rights, the law enforcement of many administrative departments is often involved in the protection of intellectual property rights. In the United States, Congress supervises administrative agencies through the exercise of investigative powers. However, the supervision and accountability mechanisms established in China's coordinated division of labor system will appear weak compared to the three-power separation and mutual supervision mechanism established by the United States at the beginning. In the absence of a sufficiently strong supervision and accountability mechanism, so many administrative agencies with the right to enforce intellectual property protection and enforcement will inevitably have unclear distributions of powers and responsibilities and causing mutual prevarications.

3.2.2 Differences stipulated in the constitutions of the United State and China

More than one-third of the countries and regions all over the world now explicitly put the articles of intellectual property rights in their constitutions, and the United States is one of them [13]. According to Article 1,

Paragraph 8 of the U.S. Constitution, *To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries*. Therefore, protection of intellectual property rights is incorporated into the legal framework at the beginning. At the same time, Article 6 of the U.S. Constitution also stipulates that the U.S. Constitution is the supreme law of the country, thus laying a firm foundation for the protection of intellectual property rights in the United States. The constitution is a kind of authorization law in nature. The constitutional protection of intellectual property rights in the United States is realized by the way that the constitution authorizes Congress to exercise legislative power [13]. It is with the constitutional authorization that the Congress can legally and smoothly formulate relevant legislation for the protection of intellectual property rights in subsequent legislative acts, and the president can exercise administrative power in a fair way, so that the owners of intellectual property rights can truly benefit from the provisions of the constitution. It is the authorization of the Constitution, combined with the special political system of the separation of powers in the United States, that enables the smooth operation of intellectual property protection in the United States.

However, there are no clear and direct provisions on intellectual property in China's constitution. The constitution is the fundamental law of a country. China is a country where the people are the masters of the country, and its original intention to establish a country is naturally reflected in her constitution. Therefore, China Constitution clearly stipulates the protection of citizens' legal private property, freedom of speeches and creations, and also encourages the developments of science and technology in Article 20. We can also infer from these that China Constitution has a meaning of intellectual property protection. However, the lack of physical properties of intellectual property and the anonymity of cyberspace make this indirect protection seem a little weak. It is more necessary for China to formulate special laws for targeted protection.

3.3 Flexibility in judicial review

3.3.1 Different bases of review: statutory law or case law

As to form of legislation, the application of the law to online copyright in the Chinese State is a centralized form of legislation. This centralized form of legislation is effective in systematizing legal settings and reflecting some of the common features of online copyright infringement, but it also has obvious disadvantages, mainly in that the criminal and penal settings are not very adaptable to new situations and have a lagging nature. Unlike China's centralized form of legislation, as there is no unified criminal code, the regulation of online

copyright in the United States is mainly based on the tradition of case law, which is stipulated in the form of enacted law, and the main basis for the protection of online copyright is the corresponding provisions in the single-line copyright law it has enacted.

3.3.2 Different modes of trial

The mode of proceeding refers to the type of courtroom hearing used. A country's civil law or common law system can be identified by the way in which it is conducted. In addition, the mode of trial also determines the position of the various participants in the proceedings. The United States is a typical country with an adversarial model of litigation, while China has a mixed model. The US has an adversarial trial model, and adversarial litigation is also known as "partyism". An isosceles triangle is formed between the judge, the prosecution and the defence. The judge is in a neutral position and is the top of the triangle, while the prosecution and the defence are on an equal footing and are equivalent to the two bottom corners of the triangle. The opposite of the adversarial model of litigation is the inquisitorial model. The judiciary does not adopt the principle of "don't sue, don't ignore", but rather the principle of "don't sue, don't justify", i.e. the judiciary takes an active role in pursuing crimes on its own initiative. In addition, the judge is no longer a passive observer, but combines the functions of trial and investigation. The defendant is the object of the trial and has limited rights. Hybrid proceedings, which are both adversarial and inquisitorial. This is the model of litigation used in China.

3.3.3 Different emphasis on process

There is a widespread emphasis on substance over procedure in the work of China's IPR judicial system. Thousands of years of Chinese cultural traditions are constantly influencing the judicial culture of today. In the area of judicial culture, the most obvious influence of tradition is the widespread phenomenon of the judiciary's failure to observe procedural constraints, the emphasis on substance over procedure and the reduction of procedural law to a mere ornament. To this day, this phenomenon is still relatively common, on the one hand, in the vigorous promotion of the rule of law, but on the other hand, not in accordance with the procedures provided for by law, from top to bottom, to different degrees throughout the country, this situation, objectively also led to a large number of legal problems.

American justice, on the other hand, attaches considerable importance to procedure, and the concept of procedure is at the heart of common law. In the United States, the constitutional principle of "due process" is the most vital kernel of the rule of law, and the procedural law of the United States has been gradually developed

and perfected, and the procedural rules now play a vital role in protecting the rights and interests of the people, which also has important significance for the improvement of justice in China [14].

4. CONSTRUCTION FOR A COMPLETED LEGAL SYSTEM

4.1 Improve legislative technology and enhance legal science

China does not currently have laws or regulations specifically for online infringements, so this article suggests drawing on the special legislative model of the United States, and referring to the establishment, promulgation and implementation process of the “Cybersecurity Law of the People’s Republic of China” to formulate a regulation on Internet piracy [15]. Special legislation. To be specific, the law on combating online piracy should be an independent common law, and its content should represent the interests of ordinary social relations at the Internet level. Additionally, as a common law, it should be formulated and revised by the Standing Committee of the National People’s Congress, which means that this law can be revised in certain periods according to the needs of the Internet, and there will be no serious lag in its provisions. Furthermore, the law should enumerate its provisions. For example: clarify the definition of online infringement, the type of infringer, whether the platform needs to be responsible for piracy, and how to convict it according to category and stuff. Last but not least, since online piracy is not a single infringement, it also involves the theft of intellectual property rights, the protection of online works, and the loss of the economic interests of owners. Therefore, its supporting judicial interpretations or Supreme People’s Court guiding cases should also be timely Promulgated to ensure the fairness and fairness of the ruling and factual reference.

4.2 Implement the constitutional guarantee of citizens' rights

Article 13 of the China Constitution clearly stipulates: “The state protects the right of citizens to own lawfully earned income, savings, houses and other lawful property”, which is the direct protection of citizens’ property rights in the Constitution. Does this article contain intellectual property rights? In fact, there is indirect protection of intellectual property rights in China Constitution. The objects of intellectual property are intellectual achievements or industrial and commercial marks, which are invisible and intangible. The immateriality of these intangible objects is one of the most essential characteristics of intellectual property. It can be said that it is this immateriality that separates intellectual property rights from traditional tangible property and puts it in a special position. But at the same

time, the results created by intelligence also have economic values. Intellectual creation itself is an intangible wealth. Intellectual property, like ownership, is a right in rem, which is absolute and exclusive [13]. In a universal sense, it is a reasonable inference that a person’s intellectual achievements, industrial and commercial marks and other intellectual property achievements are unique to oneself and should not be taken away and used by others at will. Therefore, it is the best embodiment of the protection of citizens’ legal property in the Constitution that Intellectual property owners seek legal helps and claim material benefits against them.

On the other hand, the copyright, authorship and other rights contained in intellectual property rights are entirely within the category of personal rights. It can be said that intellectual property itself has the dual attributes of personal rights and property rights. The protection of property rights in the China Constitution have been discussed above. As for personal rights, Article 37 also stipulates that freedom of citizens of the People’s Republic of China is inviolable. Therefore, we can see that the protection of personal rights in the Constitution also partially protect intellectual property rights. At the same time, the Constitution also encourages scientific developments and stipulates that everyone must abide by the Constitution and laws. These provisions also provide indirect support for the protection of intellectual property rights. It can be said that although China has not explicitly written intellectual property rights into the constitution, the protection of intellectual property rights never lacks the support from the constitution. For the present China, what China really needs is to effectively implement the protection of citizens’ rights. As long as citizens’ rights are guaranteed and the protection of personal and property rights in accordance with the current constitution, intellectual property rights will naturally be well protected. Of course, in the processes of implementing the protection of citizens’ legal rights, other departmental laws and the cooperation of relevant law enforcement agencies are also needed.

4.3 Enriching the basis of judicial review and focusing on procedural fairness

4.3.1 Broadening the content of judicial review

First, the “reference” role of jurisprudence in court decisions, such as the guiding cases and gazetted cases issued by the Supreme Court, should be recognised to a certain extent. In judicial practice, the guiding role of typical cases should be emphasized. Good cases are a vivid vehicle for reflecting fairness and justice and advocating social integrity. The establishment of a judicial case study center and the strengthening of case studies can give full play to the function of education, evaluation, guidance and demonstration of judicial

decisions, allowing the general public to understand the boundaries and distinctions between right and wrong, black and white, and to enhance their awareness of law, rules and integrity, so as to promote the formation of a good rule of law environment in which the whole society can act according to the law, seek the law in case of problems, use the law to solve problems and rely on the law to resolve conflicts. The next step is to promote the formation of a good rule of law environment.

Secondly, when adjudicating cases involving intellectual property, the people's courts should not limit the legal basis to "laws" in a narrow sense, but should broaden it to include administrative rules and regulations, etc. In the existing "based on" laws and regulations, "reference" regulations, after the increase in the "examination" of general normative documents, to give it its due legal status. In the current intellectual property legal system is not sound background conditions, to the application of the norms of the law to improve, intellectual property cases in the trial, if there are rules to follow, there is evidence to rely on, in line with the spirit and purpose of the legislation, should be considered its legality or specific effect.

4.3.2 Procedural aspects

Procedural justice is the orientation of modern litigation value, and it is an important link to achieve the highest value goal of judicial justice. In accordance with the WTO accession agreement, a pre-litigation injunction system needs to be introduced into the field of intellectual property protection. The establishment and implementation of this system not only safeguards the legitimate rights of the right holder, but also protects the public interest of the society. However, this system has not been established for a long time, and there are many shortcomings in the design of the system, and there is no uniform standard in judicial practice, resulting in its function being greatly reduced. In the light of procedural justice, it is an effective way to improve the system by examining the pre-litigation injunction through the perspective of participation, neutrality of the adjudicator, reciprocity, reasonableness, autonomy and timely termination of the procedure.

5. CONCLUSION

Due to the special natures of Internet and intellectual property rights, the protection of Intellectual property rights in cyberspace must be different from the traditional legislation in terms of legislation, law enforcement and judicial review. Through the analysis of cases and the comparisons of legal systems between China and the United States, it can be found that there is no perfect standard for the definition of Internet intellectual property in China's current legislation. The processes and penalties of law enforcement are also

excessive vagueness. These problems lead to the lack of protections of intellectual property rights, especially in cyberspace. Based on the analysis of the US intellectual property protection experience and the comparisons of China's current laws, here concludes that Chinese laws can start with improving legislation, law enforcement, and justice review respectively. That is, first, formulate a special legislation to regulate Internet piracy. Second, clarify the basic right attributes of copyright to implement the constitutional protection of citizens' rights. Third, enrich the basis for judicial review. Finally, pay attention to the fairness of procedures to improve the quo of the protection of China's Internet intellectual property rights.

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