

Research on the Copyright of Remixes Short Videos

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ABSTRACT

As a creative activity in the general concept, the production of remixes short videos has not yet been regulated by specific laws and regulations, the ownership of rights is not clear, and because of the weak awareness of copyright in the general environment, leads to the area of plagiarism and infringement of the copyright of others and other cases always occur. This article focuses on the copyright issue of remixes short videos, and also focuses on the issues of whether the remixes short videos belong to the “Works” stipulated in the Copyright Law of The People’s Republic of China and whether the use of other people’s works in the remixes short videos can be regarded as reasonable, and hopes to put forward some suggestions for the prevention, solution or regulation of related problems.

Keywords: Short Videos, Remixes Short Videos, Copyright, Reasonable Use.

1. INTRODUCTION

The rise of short videos on the one hand stimulates the public’s creative enthusiasm so that everyone can be content, with the output of ideas, on the other hand, it also brings a lot of problems such as plagiarism, plagiarizing other people’s content, and then rise to civil disputes, especially those caused by remixes short videos. At the same time, because the establishment of relevant laws and regulations is still in the exploratory stage, such disputes often have difficulties in obtaining evidence and obtaining evidence, and the judgment of such cases also has difficulties. To sum up, making clear the rights of remixes short videos, making the rights enjoyed by short videos content producers be clear, and establishing the relevant standards for judging whether or not infringement occurs, are very important for the development of the short video industry. The industry needs to develop, but such development should be regulated by relevant laws and regulations, rather than “Wild Growth”, and the rights and obligations of the relevant groups should be clear.

2. BACKGROUND AND SIGNIFICANCE OF THE STUDY

2.1. The Concept Of Short Video

According to the general understanding on the network, the short video is the video content that plays on various new media platforms, suitable for watching in a moving state and short leisure time, high-frequency push, ranging from a few seconds to a few minutes. Their content incorporates topics such as skill-sharing, humor, fashion trends, social hot spots, street interviews, public education, advertising ideas, business customization, etc., with the development of network technology and short video platform, it is a new type of video content. One of the most striking features of short videos is that they can be viewed in fragmented time. It conforms to the behavior of people in the present society, which is one of the reasons for its rapid development. The short videos in this article are of this meaning.

2.2. The Concept And Characteristics Of Remixes

As an imported cultural concept, the first official definition of remix is the 2013 Green Paper on Copyright Policy, Creativity and Innovation in the Digital Economy report, the report defines “Remixes” as “Works that create something new or innovative by changing or

combining existing work.” [1] Remix refers to the act of creating new works by abstracting and synthesizing existing works of writing, music, art, video, software, and so on [2]. Since the 1960s, with the development of new technologies in the fields of recording, Internet, and digital, it has become easier to extract parts from a work and then synthesize a new one, this has led to an unprecedented increase in the number and variety of remixes. In particular, the forms of remixes mainly include the following: (1) remixes of musical works that sample existing musical works and harmoniously mix sounds from multiple sources, these samples may come from a different instrument, voice, or orchestra [3], (2) remixes literature, that is, taking pieces from existing literary works and combining them into a single work, (3) remixes arts work, namely selects some essential factors from the existing fine arts work and synthesizes these essential factors the work of fine art, (4) remixes audio-visual works, that is, select some sound, image and other elements from existing audio-visual works and combine them into a new audio-visual works, (5) remixes database, namely by the different network user common participation, will each kind of information mix together the database. For example, Wikipedia, founded in 2001, is an open online encyclopedia written with the participation of people from all over the world. In China, Baidu Encyclopedia is similar, users can edit the contents directly [4].

The remixes short videos discussed in this article belong to the category of remixed audio-visual works, mainly including short video clips, short video commentary, parody, and other types.

From the above definition, we can know that remixes short videos have the following characteristics: (1) the use of sound and image elements of other people's content, the sound and image content of such remixes works includes segments of other people's published content, (2) the extracted fragment should be synthesized and processed into a new work which is different from the quoted content if it's only the fragments of the quoted works assembled but without any creation, then the content produced in this way cannot be called remixes short videos, (3) remixing includes two processes: sampling and synthesis, (4) remixes have a lower barrier to entry than completely original content, which is why more and more users are choosing to create such content.

3. THE ATTRIBUTE OF REMIXES SHORT VIDEOS

In China, whether a work is original or not, is the key to determining whether it can be incorporated into the legal system of copyright and then recognized as “Work”. Article 15 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Copyright Civil Dispute Cases sets out the elements of originality, if the expression of a work

created by different authors on the same subject is independent and creative, the authors shall be deemed to enjoy their independent copyright. The Copyright Law only protects expression, not unexpressed inner thoughts, and this protected expression is created by the creator alone and creatively.

According to the above, the standard of originality in China includes two meanings: one is to complete independently without copying, and the other is to be creative. From the point of view of our country's current legislation, the interpretation and stipulation of the criterion of originality are limited to the two meanings mentioned above, although there have been discussions in the academic community on what constitutes independent completion and what constitutes creativity in originality, there are also different opinions. In judicial practice, the determination of originality usually includes the determination criteria of creativeness, including “Whether it belongs to the personal expression of the author”, “Whether it is the result of the author's independent choice and processing”, “Whether it will have an impact on the public domain”, “Whether it is novel”. However, it's difficult to confirm what is a personalized expression and how to judge whether it has a novelty in a large number of short videos.

In practice, the traditional British criterion was “Skill, Labor, or Judgment”, French required originality to reflect the “Personality of The Writer”. Americans adopted the “Forehead Sweats” principle in the early days, after the *Fiest* case, the works must be invested with a little creativity. Our country adopts the standard of independent creativity [5]. In terms of the remixes short videos, maybe we can combine the British and French standards to refine the identification of “Originality”. First of all, as the remixes creation works, the remixes short video's author first needs to browse other people's prior works in the creation process, and choose the pieces of works they want to adopt, the process of this selection contains the author's judgment of the content they want to create, which is the direction of the subsequent creation and also reflects the author's personality. Secondly, in the process of short video production, the author needs to arrange and combine the pieces of other's works and may add their personal viewpoint or deduction. These processes can be regarded as a “Re-creation” of the original works, to make them different from the original work, but also includes the author's subjective thinking and the author's skills, labor, and judgment. At the same time, based on the visibility of remixes short videos, the selection, arrangement, and expression of the author's point of view described above can be directly perceived by others. Therefore, it is advisable to refer to the standard of originality in Britain and France in identifying the originality of remixes short videos.

4. THE COGNIZANCE OF “REASONABLE USE” OF REMIXES SHORT VIDEOS

4.1. Reasonable Use Concepts and Scholars' Perspectives

In practice, there have been many cases of determining whether a short video constitutes fair use according to the "appropriate citation" rule. The focus of the court's analysis is on "appropriateness", that is, the proportion of users who use other people's works in their works [6]. Following the provisions of the Copyright Law, reasonable use means, under certain circumstances, the use of a work without the permission of the copyright owner and payment of remuneration to the copyright owner, for example, "For introduce or comment on a work or to illustrate a point, make appropriate references in the work to works that have already been published by others". Because of how they are created, it is common to use the works of others without permission, in some reaction videos, video producers usually have to put the entire published work into their video, and most do not pay the copyright fee. In some of the short videos that have been edited and re-created, almost all the images and sounds come from other people's work, short video producers may also directly or indirectly rely on these videos to obtain certain economic benefits, such direct use may affect the value of their works or reduce the commercial benefits available to the original authors.

Therefore, some scholars suggested that such acts should be regulated, as a kind of tort. However, others believe that such short videos have promoted the dissemination of the original works, not only hurt the original works but also enriched the cultural life of the public to a certain extent, excessive restrictions on the creation of such content may be detrimental to the development of culture and should be seen as a reasonable use to protect the public's creative initiative. Therefore, even if it's admitted that the remixes short video is a "Work" under the Copyright Law, whether the use of other people's works belongs to the category of reasonable use or tort is still not clear for judgment.

4.2. The Problems Faced by The Cognizance of The Reasonable Use of Remixes Short Videos

Under the current legal system in China, there are the following difficulties in determining whether the use of other's works in remixes short videos belongs to the "Reasonable Use": First, article twenty-two of Copyright Law of the People's Republic of China only states that it's appropriate to quote others' work, but comments include both positive and negative comments, and in many commentary remixes short videos, video producers are outspoken in their negative comments about the work they cite, and comments made by some producers with large online followings are more likely to

have a negative impact on the distribution or revenue to the original work, and whether there is a causal relationship between this influence and the use of the work is difficult to determine, it merely stipulates that "The legitimate interests of the copyright owner must be reasonably harmed" without further explanation of the circumstances that have harmed the legitimate interests of the copyright owner. In judicial practice, it will be difficult for both parties to give evidence and explanation.

Second, article twenty-two only provides for the reasonable use of another' work, it does not say whether financial benefits can be derived from such use. As we all know, the short video industry is not only for the sake of creating a wave of national creation and creating new ways of entertainment but also for the pursuit of economic interests, many short video producers are also entering the field for income-generating purposes. And because of the development of technology, short video platforms and the producer of the form of income are also very diverse. Open membership, advertising, as well as the early live broadcast platform of the reward model, are the way to obtain economic income. But in the case of remixes short videos, their content is produced using clips of other people's work, and the use is unpaid. So if the producers get financial benefit from the videos they produce, or make remixes videos for for-profit purposes and upload them to cyberspace, even if they don't charge viewers directly, could this be considered as reasonable use? At the same time, in practice, there are cases where producers of short videos do not have the objective of making profits but have the objective of obtaining economic benefits. Therefore, it is also difficult to determine whether the purpose of using someone else's work for remixes short videos meet the requirements of article twenty-two.

5. CONCLUSION

Based on the plight of remixes short videos, we should regulate this kind of creation from the following aspects: (1) Refine the criteria for judging the originality of works, and focus on "Originality" rather than the height of creation, (2) Expand the scope of the existing reasonable use cases to avoid excluding the excessive use of the works of others from the reasonable use cases, (3) Clearly define the "Quality" and "Quantity" of using other people's works, (4) Including "can be profitable based on remixes short videos" into the purpose of using other people's works, carry out case-by-case analysis of the purpose of use according to the specific case.

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