

On the Network copyright's Protection in China

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Abstract

Due to the wide application of Internet technology and creation of personal web space, people share the resources more conveniently, but there have being challenges on protection of network copyright. Various copyright dispute cases which are happening frequently not only relates to the copyright protection of others' works, but also relates to the copyright protection of related works from the creator. If the situation continues without control, it will affect the healthy development of the Internet, and what's more, it is likely to endanger the public interests. In order to prevent and reduce the related copyright disputes, it is necessary to analyze network copyright protection based on the current situation of copyright infringement and the predicament of network copyright protection. In order to strengthen copyright protection of the network works, it must carry out effective measures on technical level, legal system and management level and consciousness field.

Key words: network; cyberspace; copyright; infringement

1. Introduction

Nowadays, with the rapid development of

technology and network platform, the network becomes an integral part for people to live, work and learn. The development of network makes people's life, work and study easier and happier. While network brings us convenience, it also faces a variety of crises. The copyright of Internet works is one of them. Copyright refers to the rights that authors of literature, art and science enjoy in accordance with the law, including personal rights and property rights.^[1]The network copyright is personal and property rights that the creators and owners of Internet works enjoy for their creation or owned works according to the law.^[2]

2. The predicament of web space copyright protection

Since 1991, China has promulgated regulations of network copyright protection in succession such as "Copyright Act", "Regulations of the Copyright Implementation" and so on. Copyright law's fundamental purpose is to balance rights between copyright owner and copyright user, not only to form spiritual and the material incentive mechanism to encourage copyright owner to create works, but also to protect the copyright user's "fair use" to get necessary restriction on copyright protection. It makes social value of works be realized better, and promotes the advancement of knowledge. However, on

background of the network, copyright protection of many works has been challenged.

2.1 It is difficult to differentiate copyright status

For the publication of conventional literature and audio products, there is a unified standard to restrict. For example, the request is very clear on the copyright page. It requires to specify author, publisher, place of publication, publishing time, editions, even licensing condition. These reflect exactly the main body, the object, the copyright status and other information of the literature, and provide conditions for the user getting authorization and owner's authorization.^[3] On background of the network, the copyright information is more likely to be tampered, so that it is more difficult to distinguish between true and false for subject of copyright and authorization conditions.

2.2 "Safe harbor rule" is an umbrella

Facing more and more copyright litigation, related websites defend themselves based on the famous "safe harbor rule". "The safe harbor rule", also known as "Notification + remove" rule, was put forward in "the Digital Millennium Copyright Act" by the United States in 1998. The rules take "It can respond quickly after receipt of the notice of infringement according to statutory conditions, and remove the allegedly infringing video content or shield the user to access to them" as one of the conditions of related sites freeing from tort liability.^[4] "Regulations of Protection of Information Network Dissemination" which was promulgated in China in 2006 draws lessons from the "safe harbor rule" in the legislative process. The twenty-second provision of regulation regulates: The Internet service provider provides information storage space for clients so that clients can offer network works, performances,

audio and video products through information net to the public. The Internet service provider are not liable, if they conform to the following conditions: (1) indicate that the information storage space is provided to the service objects clearly, and make public network service provider's name, contact, and network address; (2) don't change the works, performances, audio and video products provided by the service object; (3) don't know or don't have reasonable reasons to know that works, performances, audio and video products provided by clients are tort; (4) don't obtain economic benefits directly from the works, performances, audio and video products provided by clients; (5) after receiving notification of the right owner, according to the regulations, remove the works, performances, audio and video products that the right owner think are tort. "Even if the violations exist, the infringer can be free from tort liability with the protection of safe harbor rule", known as a protective umbrella.^[5]

2.3 Network links expand infringement main body

The openness of network makes any one access the network space freely in majority situations, or access after registration. There are large network links in the space. In most cases, the presence of links, in founders' opinion, is to let others make a link or founders link to other space to increase visits of their own space.^[6] However, in specific cases, improper link may lead to infringement, and copyright risk of links is mainly from the tort of link website. When sites linked contain infringing material, due to link founders objectively making the expansion of tort scope, link founders also have the corresponding joint liability. Then, because network correlation of Internet makes the scope of infringing main body expand constantly, it is difficult to carry out ef-

fective punishment to stop the infringement.

3. Path selection of web space copyright protection

There are several aspects of the path choice to strengthen network works copyright protection as following:

3.1 The path of technology level

User access control is authenticating users by the username and password, by which only the legitimate user name and the correct password can enter, and provides different levels of users with different resource permissions according to different permissions of user accounts. The limitations are that this technology can only prevent illegal users to use digital resources, but for those who have legitimate account and password, it is incapable to prevent them to copy and spread randomly after getting digital resources; in addition, only one password is confidential for this method. Once the digital resources user password has been compromised, and especially when the administrator's password is broken, the loss will be very serious.^[7]

Digital rights management (DRM) is a comprehensive technology including the user access control, content encryption protection, copy protection and other functions. It is "the new business model, in the network and digital environment, with rights management technology as the core, to protect digital content security effectively and support digital copyright trade. This business model relates to the technical, legal, cultural and other problems".^[8] It is mainly to prevent illegal users' to use and copy through the means of encryption, and encrypt digital content. Only authorized users can get the key to decrypt, and the key is bond with the user's hardware information. Encryption technology and hardware binding

technology prevent illegal copying, so as to effectively achieve the purpose of copyright protection.^[9]

It also includes: Information encryption technology, Information hiding technology, Copy protection technology.

3.2 The path of legal system and management level

China has established many laws related to the network copyright, such as "The Supreme People's Court on the trial of cases involving copyright disputes over computer network applicable legal interpretation"(the regulation was changed on November 20, 2006 and was implemented on December 8, 2006) which was released in 2000; "Regulation on the Collective Administration of Copyright" implemented on March 1, 2005; "Administrative Protection of Copyright on the Internet" issued jointly by National Copyright Administration and the Ministry of information industry on April 30, 2005; "Regulations on the protection of information network transmission right" promulgated by the State Council on July 1, 2006, etc. These laws' promulgation and implementation mark that the intellectual property rights protection system in China has basically formed. They strengthen the copyright protection in the network environment, promote the development of network economy and the construction of spiritual civilization in the healthy and orderly direction, and has played a positive role for the protection of author's copyright of network works. Therefore, when we solve network copyright infringement issues through legislative route, we should understand and use the relevant provisions of the "safe harbor rule" correctly, and make the law established more maneuverability.^[10]

If we make sure that the user can use works conveniently and economically, the transmission channel of works will be really smooth; what's more, it should pro-

protect the interests of the public and realize balanced development of the interests, so we can realize the cultural prosperity.^[11]

It must strengthen public awareness of copyright protection through a variety of ways, such as network video, radio, television, lectures and other forms of supporter to strive for “everybody is the beneficiary of the copyright, and also is the advocator and executive of rights”. The basic purpose of copyright protection is to protect legitimate rights of the obligee (copyright holder, neighboring rights), then create social atmosphere on the respect for intellectual achievements, and establish the legal mechanism that is benefit to the dissemination of works to promote scientific and cultural prosperity.

4. Summary

Therefore, the essence of exploring and realizing actively network works copyright protection is to proceed with the rationality between resource sharing and the copyright protection, and make an analysis of the main reflection of conflicts between them. Then, discuss balanced strategy of both from the level of technology, management and awareness in order to balance the contradictions and conflicts between the information resources sharing and the copyright protection. On the basis of these, establish suitable and effective copyright protection measures in a network environment to further promote the construction of knowledge innovation system in China.

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