

Research on Copyright Infringement of Network Remixes Short Video

Mengna Niu¹, Zhide Zhou^{1,2*}

¹Law School/Intellectual Property School of Guilin University of Electronic Technology

²Intellectual Property Research Institute of Xiamen University

Abstract. The new economic model and the development of the Internet and media technology have bred the network mixed clip video. This new video type not only enriches people's spiritual and cultural life, but also brings about copyright infringement problems. This article focuses on the copyright issue of Network remixes short video, and also focuses on the issues of whether the Network remixes short video 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 Network remixes short video can be regarded as reasonable, and hopes to put forward some suggestions for the prevention, solution or regulation of related problems.

1 Introduction

With the development of the Internet and media technology, the Network remixes short video came into being. With the rapid development of the short video industry, people's awareness of intellectual property rights protection is also enhanced. 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 Network remixes short video, 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 Concept and Legal Attribute of Network Remixes Short Video

2.1 Concept of Network Remixes Short Video

Network remixes short video is a kind of secondary creation short video type based on clip function. Generally speaking, it refers to the use of pre-existing one or more video works, re-editing and arrangement and combination through network technology, and finally constitute a new complete video. The Network remixes short video often presents the following characteristics in the form of expression: firstly, it has a

distinct theme and strong subjective color. After selecting the theme and idea for creation, the creators of Network remixes short video collect video materials for creative splicing and combination. All audio-visual materials in short videos are built around the theme and idea selected by the creators. Secondly, The Network remixes short video has a simple structure. It is composed of several small fragments in parallel or progressive structure, which tends to create atmosphere rather than narrative in terms of communication effect. Thirdly, it has changeable audio-visual language. The creators of Network remixes short video use music, special effects, subtitles and other audio-visual languages to render the atmosphere and impress the audience. Finally, the Network remixes short video has a short and concise length. In a fast-paced society, it uses the fragmented time to meet the needs of novel visual experience.

2.2 Legal Attribute of Network Remixes Short Video

According to Article 3 of the Copyright Law and Article 2 of the Regulations for the Implementation of the Copyright Law, the works should have the following substantive conditions: Firstly, the works should be intellectual achievements; secondly, they should be original; and finally they should be able to copy in some form. According to the definition of works in the Copyright Law and the Regulations, the key to judge whether mixed short video is a work is to judge whether mixed short video is original.

Originality includes two parts: "independence" and "creation". The Network remixes short video that constitute the work should meet the requirements "independence" and "creation". "Independent" means

* Corresponding author: 854167177@qq.com

the creator of the Network remixes short video is independently conceived, edited, music completed, excluding plagiarism [1]. The creation of creators is in line with the “independence”, generally there are two forms: one is that the creator independently creates new works. In this case, no matter whether the achievement is the same as the previous existing achievement, it should be identified as the independent creation of the creator to meet the requirements of “independence”. Secondly, the creator completes the second creation based on the original work [2]. As long as the second creation is essentially different from the original work, it should be identified as an independent creation. “creation” means that Network remixes short video should meet the minimum creative requirements. The “creative” of copyright law is different from the originality of patent law, the “creativity” in the Patent Law requires that invention and other patents have significant technological progress and require high creativity, however, the creative requirements of the works in the Copyright Law are relatively low, our country copyright law is set on the basis of British law and the mainland law system, therefore, China's high judgment standard for creative achievements is not conducive to the protection of intellectual achievements [3].

In the specific judicial trial, The Haidian District People's Court in Beijing heard the case of copyright infringement ownership and infringement dispute against Baidu Company, which held that the judgment standard of originality has nothing to do with the length of the video, and to judge whether the work is original, should meet two conditions: First, whether it is done independently by the author. Secondly, is it “creative”. Beijing Intellectual Property Court in the case of *Youku v. Shu Shu Technology Co., Ltd.* held that the length of the video can not be a non-infringement defense. In hearing the case of the copyright rights of “Kuaishou” and Huaduo Co., Ltd. the Haidian District People's Court of Beijing held that the work should have three conditions: first, the specific expression of literature, art and science. Second, have the originality, Third, it can be copied in a tangible form. The court held that although the length may limit the expression space of the creator, but the limited expression space does not mean that the expression form is limited. In addition, the court held that the current development of the short video industry has a certain scale [4]. In order to promote the prosperity of cultural undertakings, it should not set limits on “works” and artificially raise the threshold for the constituent elements of works.

To sum up, when judging the originality of remixes short video, as long as the remixes short video meets the criteria of originality in its creative technique and way, it should be deemed to be original and protected by the copyright Law. Whether the remixes short video constitutes the infringement of the original work does not affect whether it has an judgment of originality, and is independent of the length of the video. At the same time, for the purpose of encouraging creation and promoting the prosperity and development of cultural undertakings, relatively loose judgment criteria should be set, and the original judgment criteria should not

become the restrictive threshold for secondary creation. So far, the originality of remixes short video should be reflected in the following aspects: First, the selection and arrangement of the original work fragments should reflect the original expression of the creator, rather than mechanical editing and splicing [5]. Secondly, subtitles, narration and other contents should reflect the intellectual labor of the creator, rather than repeating the original work.

3 The copyright Infringement dilemma of the Network remixes short video

3.1 The Network remixes short video copyright governance mode is insufficient

Network remixes short video copyright management includes four aspects: governance subject, governance object, governance means and governance target. Governance subjects include administrative organs, judicial organs and social groups. Social groups include original copyright owners, short video platforms, secondary creators and the public. Governance object is aimed at the Network remixes short video that may have infringement on short video website. According to the diversity of governance subjects, the governance means also show diversified. Administrative organs lead administrative governance, judicial organs lead judicial governance and social governance, the three means of governance complement each other. The governance target of copyright management of Network remixes short video is to create a good network ecology, protect the legitimate rights and interests of copyright owners, and stop the infringement phenomenon of short video industry. At present, the above three means are insufficient, so that it is difficult to achieve the ultimate governance target.

3.2 The application standard of the reasonable use system of Network remixes short video is fuzzy

The Bern Convention sets out minimum requirements for the reasonable use for the member states, that is allowing the member states use the information, teaching and other published work without the permission of the author, but the use of the work must be limited to the “reasonable range” and the original author and the source of the work must be indicated. The Rome Convention imposes restrictions on adjacent rights, stipulating that they can be used without the permission of the obligee, but it is limited to four cases: private use, for reporting on current affairs, broadcast organizations are temporarily used for broadcast purposes, for teaching and scientific research. The international conventions adopt “three-step test” to determine whether it constitutes reasonable use. The United States adopts the “four-step test”, When judging whether a work constitutes a reasonable use, the United States usually judges from the nature and purpose of the use, the nature

of the work, the proportion of the used part in the whole content of the copyright work, and whether the use affects the market value of the copyright work. According to Article 24 of the Copyright Law and Article 21 of the Regulations for the Implementation of the Copyright Law, the judgment standard for reasonable use in China is limited to the twelve legal circumstances listed in the Law, which is similar to the "three-step test" of the international convention [6]. However, the judicial practice and academic circles to the "three-step test" and the "four-step test" are involved. At present, the reasonable use system in China has the following problems: first of all, the applicable standards of "three-step test" and "four-step test" are not unified in China, and different courts have adopted two standards in the trial of different cases. The connotation of China's legislation should conform to the "three-step test", but in individual cases, the "four-step test" also apply. For example, in the case of "Copyright Society of China v. Xi'an Changan Film and Television Production Co., LTD.", The court adopted the "four-step test" standard in the judgment, and finally ruled that the film "Years of Passion" did not constitute infringement. Secondly, the revised copyright Law still adopts a closed enumeration method for reasonable use, which is inflexible, and the narrow scope of reasonable use may lead to difficult to deal with problems the progress of science and technology causing. In addition, the requirements in the reasonable use system cannot be used for commercial use [7]. However, it is difficult to determine whether the creators of Network remixes short video are used for commercial use and whether they have a profit purpose. The creators of Network remixes short video usually have no direct profit in the short video platform, and usually realize it by accumulating traffic and other ways, such as commercial advertising, live rewards, etc., whether the above way can identify as a for-profit purpose and whether profit purpose has the corresponding amount limit, there is no clear regulation.

4 Suggestions on improving the copyright protection of Network remixes short video

4.1 Enrich the Network remixes short video copyright governance mode

Administrative organs play an important role in the supervision of short videos. For the management of Network remixes short video copyright, they should give full play to the regulatory function of administrative organs, and all parts should jointly manage, they should supervise the short video platform clarify their responsibility and urge the short video platforms to actively assume the responsibility of copyright protection, At the same time, Administrative organs should strengthen law enforcement and adopt some measures like interview, rectify and punish to the short video platforms suspected of violating the regulations.

Striving to create a green, reliable and fair network environment for the public.

Industry associations supervise short video platforms mainly through the following means, formulate audit standards, issue management regulations, sign industry conventions, the relevant industry regulations issued under the authorization of the government organs shall have mandatory and legal effect. Specifically, the task of the industry association is to refine the relevant departmental rules more detailed. Since the "network short video content audit standards detailed rules" released, a number of mixed drama was removed from the shelves, industry association issued rules and convention although does not have the legal force, but to join the association member has the effect of self-discipline, if violation of the rules, may be punished from the association [8]. Compared with the administrative organs, industry association is closer with the network short video platform. Industry association leads the regulation of Network remixes short video, encourages short video industry associations to strengthen industry self-discipline and earnestly implement the relevant laws and regulations, give full play to the supervisory and auxiliary role of industry associations, Build a bridge between network short video platform and national governance, standardize network short video behavior, urge short video platform to operate legally and compliant, take the initiative to assume the responsibility of the platform, and create a healthy and green network short video environment.

4.2 Improve the reasonable use system in legislation and justice

4.2.1 Improve legislation on the reasonable use system

About reasonable use system, the copyright law added an open provision in that "other circumstances stipulated by laws and administrative regulations" in item 13, section 1 of Article 24. Compared with the full open provisions of "other circumstances", the provisions of "other circumstances stipulated by laws and administrative regulations" can play a certain role in restricting the opening-up, but there are no clear provisions on the above other circumstances. China is now stepping into a more diversified modern society, the above method can solve most of the reasonable use problems in the short term, but with the implementation of the national innovation driven development strategy, with the continuous improvement and development of new technology and the backwardness of the law itself, there are still some behaviors in the lawlessness in the future [9]. Therefore, according to the current social situation, the copyright law legislation can draw lessons from the latest copyright legislation in Japan.

Japan's newly revised the copyright law adopts open legislation of reasonable use system, article structure takes "general clause + Certainly enumerate + save clause" mode, this is based on Japanese domestic basic

national conditions. Although China cannot copy the improvement of the reasonable use system, it can refer to Japan's idea of open legislation of reasonable use system to provide experience for the legislation of reasonable use system in China.

Item 13, section 1, Article 24 of the Copyright Law stipulates that “other circumstances stipulated by laws and administrative regulations” are uncertain in judicial practice. In order to prevent the expansion of the reasonable use system in practice, the “other circumstances” can be limited to the “specific circumstances”. The “specific circumstances” can refer to the Japanese legislative ideas in the “general clause”, and determine whether it is a reasonable use through determining the purpose, degree and impact of the use, etc. At the same time, in the legislation of Network remixes short video creation, the Japanese legislation stipulates the concept of “secondary works”, which is also a part of “Copyright Law” legislation can be used for reference in the future [10].

4.2.2 Clarify the judicial judgment methods of reasonable use system

When determining whether Network remixes short video constitutes reasonable use, priority should be given to the provisions of Article 24 of the Copyright Law of China, China's newly revised Copyright Law further improves the type of reasonable use on the basis of the old law, which is a further improvement of the “three-step test” stipulated in the Bern Convention. The law completely expresses the “three-step test”, and forms a perfect connection with the Regulations on the Implementation of the Copyright Law. This revision emphasizes the importance of “three-step test” to China. When a judge judges in practice whether it constitutes reasonable use, he should conduct a reasonable trial according to the steps of the three-step test: firstly, judge whether the use behavior is from some special circumstances; secondly, the use behavior does not affect the normal use of the original works; thirdly, the use behavior does not infringe the legitimate rights and interests of the original copyright owner.

5 Conclusion

The existence of Network remixes short video has a legal basis. However, its creation will inevitably infringe on the copyright of the original works. At present, Copyright Law is not perfect. When the copyright infringement of short video occurs, the existing laws and regulations in China cannot be applied in time, so the problem of copyright infringement cannot be fundamentally solved. In this regard, we should not only draw lessons from the foreign reasonable use system of copyright and relevant laws, but also strengthen the reasoning of the court, improve the supervision and law enforcement level of the copyright infringement cases.

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