

# The Problem of Copyright Infringement in Secondary Short Videos and the Way to Solve It

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**Abstract:** In the context of the rapid development of the short video industry, the secondary creation of short videos has become an emerging cultural phenomenon and triggered a conflict of interest between short and long video platforms. This paper discusses the issue of copyright infringement of secondary creation of short videos, and analyses the types of infringement, legal dilemmas and causes of the problem, and then puts forward that people should improve laws and regulations to introduce the rules of transformative use, establish a communication mechanism to smooth out the authorisation channels to play the role of the platforms and collective organisations. It is expected to provide legal guidance for the secondary creation of short videos, create a good creative environment, promote the innovative development of the short video industry in a healthy and orderly manner, and inject new vitality into the digital copyright and online cultural and creative industries.

## 1 INTRODUCTION

### 1.1 Background to the Study

In recent years, the users and market size of China's short video industry have continued to grow. As of June 2023, China's short video users scale reached 1.026 billion people, hitting another record high, and the user usage rate grew to 95.2%. The short video industry is rapidly becoming a new growth point for China's digital copyright and online cultural and creative industries (China Internet Information Centre, 2024). Among them, secondary creation short videos are becoming a popular cultural phenomenon by streamlining the content and compressing the length of unauthorised long video works, selecting the climax or "fascinating" clips in the original long video to attract the audience's attention, and accurately positioning and utilising the users' demand for fragmented content to provide a more compact presentation of the content and focus on the thematic ideas. However, while providing viewers with new perspectives and experiences, it inevitably faces the risk and responsibility of copyright infringement of the original work. The increasingly fierce exchanges between long-form and short-form video platforms have led to a loss of users and economic benefits for long-form video platforms. A large number of litigation cases have emerged, and the interests of

multiple parties have been damaged.

### 1.2 Purpose and Significance of the Study

The purpose of this study is to comprehensively and deeply explore the copyright infringement problem in secondary short videos, and to analyse the legal disputes and conflicts of rights behind this emerging cultural phenomenon. It further reveals the complexity and urgency of the problem by elaborating the current situation of copyright infringement in secondary short videos, including the infringement characteristics of different types of short videos, such as editing-type, narration-type and parody-type, and at the same time, this paper is committed to exploring effective strategies for this purpose, including analysing the relevant provisions of the copyright law and its application in judicial practice, dissecting the legal difficulties of copyright infringement in secondary short videos, and proposing to improve the legal framework, optimise the standards of judicial decisions, construct a dialogue mechanism and expand the legal disputes and conflicts of rights behind this emerging cultural phenomenon. It also proposes specific measures to improve the legal framework, optimize the judicial decision standard, build a dialogue mechanism and broaden the authorization channels. This study is expected to provide clear legal guidelines for

copyright infringement of secondary short videos, provide a convenient and legal creative environment for creators, balance the conflict of interests between short and long video platforms, promote fair competition and cooperation between short and long video platforms, and ultimately promote the sustainable development of the short video industry.

## 2 DEFINITION OF SECONDARY CREATION SHORT VIDEO

### 2.1 Secondary Creation

As a non-copyright term, there is still no general consensus on the precise definition of "secondary creation". Some interpret it as the act of re-inventing the original work in the field of media; others emphasise that a secondary creation is a second derivative creation modelled on a previously copyrighted work (Chen, 2024). However, most scholars emphasise that secondary creation is rooted in pre-existing works.

Therefore, secondary creation also refers to the act of creating a work with a new expression or a new form by adding, modifying, reorganising or reinterpreting an existing work.

### 2.2 Secondary Creation of Short Videos

There is no formal definition of the concept of "secondary creation of short videos", and some scholars refer to this kind of short video as "remixing audiovisual works" and some scholars refer to this kind of behaviour as "video transporting" (Xiong, 2021). The main manifestation of this behaviour is the transfer, editing and splicing of the original video material, or the use of editing, subtitling, soundtracks and other techniques to re-arrange and create the existing content to form a new video work.

Combined with the characteristics of the secondary creation of short video itself, on the basis of the definition of secondary creation, the secondary creation of short video can be defined as the formation of new video works based on the video material of the existing works, through the relevant technical means of creation.

## 3 TYPOLOGICAL ANALYSIS OF THE DETERMINATION OF COPYRIGHT INFRINGEMENT OF SECONDARY CREATION SHORT VIDEOS

### 3.1 Clip-Based Short Videos

An edited short video is a concise overview of the content of a longer video. It selects and rearranges footage and clips from longer videos based on a holistic or specific perspective, sometimes with a short introduction and explanation. The editing techniques are divided into two categories: single editing focuses on a single work and intercepts around its content, characters, and plot;. In contrast, hybrid editing combines several existing works and creates them through editing and splicing. This type of short video often directly appropriates and reassembles the material of a longer video. This act is likely to directly infringe on the original author's reproduction and network distribution rights, and is often more likely to be regarded as an infringement of copyright due to the lack of sufficient creative adaptation.

### 3.2 Narration-Based Short Videos

Compared to clip-based short videos, narration-based short videos focus more on conveying the creator's unique perspective on the content through narration while referencing long video clips. The selected clips serve the main purpose of the narration, and the long video introductions are only a vessel, with the core aim of achieving the deeper purpose of playfulness, criticism or homage through strategies such as commenting, celebrating or satirising. In this type of video, the creator interprets the film or television work in a personalised way, which provides a basis for fair use judgements and may avoid infringement of the right of adaptation. However, if the narration is limited to a simple recapitulation of the long video footage and the use of unoriginal voice-over narration, it is difficult to meet the standard of originality of the work, and cannot constitute fair use, and is prone to infringement of the author's right of adaptation.

### 3.3 Parody-Type Short Videos

Parody is an art form of deconstructing and recreating long videos through humorous imitation, aiming to

satirise, criticise or parody, quoting and adapting existing well-known works. Rather than simply copying the original work, parody differs from or even opposes the original work in terms of narrative style and values, and demonstrates unique themes, structures, character relationships, values, narrative techniques, and linguistic features, leaving room for the application of fair use. Nonetheless, although parody is a work of imitation, if it makes extensive use of the original work's images, sound effects and other materials, even if it has been rearranged or interpreted, it may still be regarded as an adaptation of the original work, thus infringing on the right of adaptation.

## **4 LEGAL DILEMMA OF DETERMINING COPYRIGHT INFRINGEMENT IN SECONDARY SHORT VIDEO CREATION**

### **4.1 Legal Basis for the Determination of Copyright Infringement in Secondary Short Videos**

#### **4.1.1 Relevant Provisions of the Copyright Law**

At present, Article 24 of China's Copyright Law enumerates 13 cases of fair use. Most scholars believe that China's copyright fair use legislation is closed legislation (Li, 2020). After the revision of the Copyright Law in 2020, the three-step test was introduced into the General Provisions as a general judgement standard, and "other circumstances stipulated by laws and administrative regulations" was added in the rules of fair use to set up a bottom clause, which is regarded as a change to a semi-open style. It is regarded as a change to a semi-open style. However, this amendment "still has not changed the closed nature of the rules for determining fair use" (Wu, 2020).

According to Article 24 of the Copyright Law, for the purpose of introducing or commenting on a particular work or explaining a certain topic, one may moderately cite the published works of others in the work. However, if a short video creator, in their creative practice, cites a work for a purpose that goes beyond mere introduction, explanation or comment, it is difficult to reasonably classify it as legal use based on the textual interpretation of the law alone. It

can be seen that the current Copyright Law provides for copyright restrictions on the 13 cases can hardly summarise all the possibilities of infringement of secondary creation of short videos, the strength of the "bottom-up clause" is not enough to cover the bottom-up, and there are still some limitations in terms of the legislative significance and content of the legislation. Although the current Copyright Law provides a certain legal framework and guidelines for short video creation, there are still some limitations in exploring the spirit and intent of fair use legislation (Dong, 2022).

### **4.1.2 Determination of Violations in Judicial Practice**

At present, the court maintains a more open and inclusive stance on the infringement of secondary short videos, i.e., it does not take the circumstances stipulated in the Copyright Law as the only judgement standard.

Rather, they draw on legal concepts such as the "three-step test" and the "four-element doctrine" as the relevant basis for trying specific cases. In general, however, the courts have been "fragmented" in their application of the determination methodology.

In addition, China's judicial policy also states that, in special cases where it is necessary to promote technological innovation and commercial development, taking into account the nature and purpose of the act of use, the nature of the work used, the quantity and quality of the work, and the impact of the use on the potential market or value of the work, if the act of use neither conflicts with the normal use of the work nor unreasonably impairs the legitimate interests of the author, the act of use may be deemed to be fair use. It can be recognised as fair use. This is in fact the introduction of the "four elements" of the US Copyright Law as considerations for the last two elements of the "three-step test" (Beijing Internet People's Court, 2023).

## **4.2 Difficulty in Collecting Evidence**

In short video secondary creation copyright infringement cases, evidence collection is a crucial part, such as frame-by-frame analyses of video screenshots and line comparisons of short and long videos, and the collection of the number of views, likes and comments on short videos. However, due to the fast and wide dissemination of short videos, and the ease of tampering and deletion, it makes the collection of infringement evidence extremely difficult. In addition, infringers often adopt various

means to cover up their infringing behaviours, such as using fake accounts and hiding IP addresses, further increasing the difficulty of evidence collection, which makes it a huge challenge for defenders to pursue infringement.

### **4.3 High Number of Videos, Difficult to Remediate**

firstly, there are multiple secondary videos based on one single long video or audiovisual work. It is impossible to use all the relevant secondary creation short videos. The dynamic nature of the short video, short video update is extremely fast, which also requires the original creation of the main body in the collection of evidence to continue to follow up on the relevant secondary creation of the short video.

Secondly, a secondary-created short video may be posted on multiple social media platforms and video websites, which have massive amounts of user data and content. The film company needs to find and locate the infringing video from each of the many platforms, and each platform has different video storage formats and access rules. For example, some platforms may need to go through complicated notarisation procedures to obtain valid video evidence, while some platforms may quickly delete the video after a complaint has been lodged, resulting in the film company not being able to finish the complete fixing of evidence in time.

The limited supervisory power of platforms, as well as the hidden and complex nature of infringement behaviour, make the remediation work extremely difficult. In the face of the huge number of infringing works, it is also difficult for the relevant departments and platforms to comprehensively and effectively combat infringing behaviours during the remediation process.

## **5 THE ROOT OF COPYRIGHT INFRINGEMENT PROBLEMS OF SECONDARY SHORT VIDEO CREATION**

### **5.1 Economic Perspective Analysis**

#### **5.1.1 Disputes Over the Interests of Creators of Short and Long Videos**

Secondary-created short videos are often created using elements such as clips, images or sound effects from longer videos, and this behaviour may, to a

certain extent, harm the economic interests of the creators of longer videos. On one hand, secondary creation short videos may attract viewers by intercepting the wonderful clips or core plot in the long video, thus reducing the viewers' willingness to watch the original work, which in turn affects the market demand and revenue of the original work. On the other hand, secondary short videos may produce a substitution effect in the process of dissemination, i.e. viewers can obtain the main content of the original work by watching secondary short videos, thus eliminating the need to watch the original work, which will also harm the economic interests of the creators of long videos.

The imbalance in revenue distribution is also an important reason for disputes over the interests of short and long-video creators. In the current digital market, short video platforms often gain revenue through advertising revenue and user rewards, which often do not fully benefit long video creators. Long video creators have invested a lot of time, energy and money in the creation process, but the wide dissemination of secondary short videos may prevent these investments from being properly rewarded.

#### **5.1.2 Market Distortions and Impaired Incentives for Originality**

Infringement not only causes financial losses to individual creators, but also negatively affects the overall market order. With the rapid development of the short video market, infringement has become increasingly rampant, leading to serious distortions in the market. Some unscrupulous elements obtain illegal benefits by stealing, tampering with or impersonating other people's original works, seriously undermining the fair competition environment in the market.

In addition, infringement can undermine the incentive to create original works. When creators find that their works are frequently infringed and cannot be effectively protected, they may lose their enthusiasm and confidence in creating, and thus reduce their input and output of new works. This negative effect will seriously hinder the healthy development of the short video industry and reduce the innovation and competitiveness of the industry as a whole.



## 5.2 Social Perspective Analysis of the Copyright Infringement Dilemma of Secondary Short Videos

### 5.2.1 Public Perception Bias

First, the public often misunderstands the concept of "secondary creation". In many cases, the public sees secondary creation as a form of creative reprocessing or cultural redistribution, without fully recognising the copyright issues that may be involved in the original work. This misunderstanding has led to the creation of secondary short videos by creators who are unaware of the nature of their actions and infringe on the copyright of the original author.

Secondly, there is also a lack of public awareness of the copyright law. Although the copyright law has been implemented in China for many years, the public has limited knowledge of its specific content, scope of application and legal liability. This lack of knowledge makes some members of the public unable to accurately judge the legality of their own actions when faced with the issue of copyright for secondary short videos, and may even inadvertently infringe on the copyright of others. In addition, some creative subjects may also be influenced by misconceptions circulating on the Internet, such as "the law is not responsible for the masses", believing that there are a large number of short-form secondary videos and that their creative acts may be widely recognised and supported, with the expectation of evading legal responsibility.

### 5.2.2 Lack of Collective Organisational Management and Authorisation Channels

In the current secondary short video market, there is a lack of effective collective organisational management and authorisation channels for long video creators to safeguard their legitimate rights and interests. This has led to many creators feeling isolated when facing infringement, which making it difficult for them to effectively defend their rights and interests.

For short video creators, they may feel the lack of channels to judge whether the videos they create are infringing to obtain authorisation or not and this also inhibits their creativity and innovation.

On one hand, due to the lack of unified copyright protection organisations and associations, creators often lack sufficient legal support to defend their rights. They often have to bear the high legal costs and lengthy litigation process on their own, which

makes many creators choose to remain silent and compromise in the face of infringement.

On the other hand, due to the lack of convenient licensing channels, it is often difficult for creators to authorise their works to legitimate users for secondary creation or dissemination. This not only restricts the revenue channels for creators, but also inhibits the innovation and development of the industry.

## 6 THE SOLUTION PATH TO THE PROBLEM OF COPYRIGHT INFRINGEMENT OF SHORT VIDEOS OF SECONDARY CREATION

### 6.1 Improvement of Laws and Regulations

China's newly amended Copyright Law still provides for specific special circumstances for the application of fair use through enumeration. The latest amendment of the Copyright Law in 2020 did not change the 12 specific circumstances stipulated in Article 22 of the old Copyright Law, except for the addition of Article 13, which provides for the following circumstances. It is limited to "use under the following circumstances", which in essence constitutes a restriction on the interpretation of the 12 specific circumstances rather than an open authorisation provision, and the use of the original work in short videos is not explicitly included in the list of specific contents. The court cannot "explain" the new limitations or exceptions based on the article in specific cases (Guo, 2022).

In contrast, the U.S. copyright law adopts a flexible fair use model, which provides a broad and flexible space for the U.S. courts to interpret. Transformative use refers to the use of another person's work by the user to form a new work with a new purpose, function, meaning or aesthetic sense different from the original work. The theory of transformative use is the result of the shift from abstract legal nature theory to concrete legal effect theory. The term transformative use was first coined by Pierre Leval in his article "On the Fair Use Standard" (Pierre Leval, 1990). In the Campbell case, the judge used this concept, but did not give a clear standard on transformative use. Since then, the United States has enriched the transformative theory through a series of jurisprudence in terms of both content

transformation and purpose transformation.

It is necessary to introduce the transformative use rule in China. On one hand, the introduction of the transformative use rule can eliminate or alleviate the uncertainty of the elemental analysis method, avoiding the dilemma of difficult choices due to the conflict between different elements in the comprehensive determination. On the other hand, the cumulative nature of knowledge determines that knowledge innovation needs to be built on the basis of the existing knowledge of the predecessors. Excessive restriction on the use of other people's works is not in line with the needs of social and economic development. When judging the legitimacy of the secondary creation of short videos, the use of transformative use rules can avoid the phenomenon of generalisation of infringement, and encourage users to make reasonable use of existing works. For example, in the case of Shanghai Fine Arts Film Factory and Jiangsu Radio and Television Group Copyright Infringement Dispute, the court held that "the work did not add new information or new aesthetic value or new understanding to the original work of art" and that the use of the work of art was for the purpose of increasing the effect of the programme, which substantially gained certain commercial interests, and therefore did not constitute an appropriate citation of the work of others.

In the scenario of short video creation, in order to avoid abuse of discretion, it is necessary to clarify the conditions that constitute transformative use. Firstly, the creation of short videos based on long videos requires new perspectives, ideas and aesthetics, and short videos should be substantially different from long videos in terms of content, purpose, nature and function. Second, the use should have the effect of promoting knowledge dissemination and encouraging innovation. Breaking down the long video into several parts and adding sporadic narration before or in the middle of each part are not substantially different from the long video, and can hardly be called innovation, which is not fair use and constitutes infringement. This kind of simple repetitive behaviour does not have the effect of prospering culture, but on the contrary wastes social resources (Dong, 2022).

## **6.2 Establishment of Communication Mechanisms and Smooth Authorisation Channels**

### **6.2.1 Fulfilling the Role of the Platform and Constructing Its Responsibilities**

In the long run, the establishment of a new copyright

authorisation mechanism for short videos is the ultimate solution to short video copyright infringement, and the establishment of such a mechanism requires the joint participation of right holders and short video platforms. The right holders (including the long video platforms that purchase a large amount of video resources from the right holders) hold a large amount of resources, which is an important source of material for the secondary creation of short videos. And the frequency of short video infringement does make the copyright owner suffer significant losses. Short video users are too dispersed and have limited negotiating power, even if they have the will to obtain authorisation, it is difficult to achieve direct dialogue with the right owner. Short video platforms have the ability and obligation to manage and control the users, and gain a lot of revenue from short video dissemination. Therefore, short video platforms should become a link between the right holders and users of works, effectively integrate music, pictures, videos and other resources, and build a copyright authorisation and distribution system of authorisation, use and payment, so as to effectively reduce the occurrence of infringement. Taking secondary creation of short videos as an example, the first is to explore the revenue-sharing mechanism and specific programmes for long and short videos, and to achieve positive incentives for both through empirical analysis and dynamic adjustment; The second is to adopt a "one-to-many" open copyright authorisation model, so that the original right holder can transfer part of the property right in exchange for dissemination benefits, so that the secondary short video authors can break the creative dilemma through the knowledge-sharing agreement, thus fixing the drawbacks of the traditional author-centrism of the copyright which has unreasonably monopolised the works in the current stage, lowering the costs of the short video dissemination and the copyright transaction, and creating a friendly creative environment adapted to the new creation and dissemination mode (Beijing Internet Court Panel, 2023).

### **6.2.2 Establishment of "Knowledge-Sharing" Mechanisms to Leverage Collective Organisations**

In the interactive context of short video creation and copyright, the traditional one-by-one authorisation model can hardly adapt to the development of the new industry. With the transmutation of the connotation of creation, the diversification and expansion of

communication channels, and the significant increase in the importance of the speed of communication and traffic, the one-by-one authorisation model has hindered the benefits of communication and secondary innovation. It reduces dissemination to mere sharing and makes it difficult to stimulate the vigour of recreation, so it is imperative to change.

The knowledge-sharing model is the key. Under this model, copyright holders can decide on their own to transfer all or part of their copyright through licensing agreements issued by organisations, retaining only specific rights, such as the right to attribution, so that short-video creators can legally obtain free secondary creative materials, thus realising the synergy between the dissemination of the work, the secondary creativity and the public interest.

The knowledge-sharing model has a unique operating structure. It adopts an open-ended licensing system, whereby a single authorisation is granted to a large number of parties, who can obtain the property rights of the copyright free of charge and at their own risk, and enjoy more freedom of choice than in a formal contract. In terms of rights allocation, personal rights are retained to show the identity of the original author, and some property rights are transferred to help the work be widely disseminated, covering the scope of authorisation for reproduction, performance, projection and information network dissemination, and the same sharing method is also required for secondary creation and adaptation. With the help of big data and blockchain technology, the construction of a knowledge-sharing system for film and television works can be expected. This model does not negate the existing authorisation system, but rather integrates it into the copyright framework as a supplement to the limitation of rights. It effectively solves the dilemma of one-by-one authorisation in the field of short videos, corrects the shortcomings of traditional copyright over-monopoly, and reduces the cost of Internet dissemination and transaction. The authorised party can promote the wide dissemination of the work, while the other party is free from infringement concerns and enjoys a good creative environment, easing the conflict of interests between the original copyright owner and the secondary creators. China should actively introduce and promote the knowledge-sharing model, fully release the value of short and long videos, and promote the innovative and orderly development of the copyright ecology in the field of short videos on the premise of complying with the provisions of the copyright law and respecting the attributes of intellectual property rights.

## 7 CONCLUSION

In the wave of continuous evolution of the short video industry, the secondary creation of short videos has become a force to be reckoned with. It not only opens up new paths for cultural dissemination and innovation, but also brings many challenges to the field of copyright. This study comprehensively analyses the problem of copyright infringement of secondary short videos, identifies the types of infringement, legal dilemmas and root causes of the problem, and highlights the complexity of the problem and the urgency of solving it. Through in-depth analysis, it is known to be crucial to improve laws and regulations to introduce transformative use rules to improve the legality of creative acts, avoid the arbitrariness of infringement determination, and provide clear legal boundaries for creative activities. At the same time, it is of great significance to establish a communication mechanism and smooth authorisation channels. Short video platforms should act as a bridge to build a reasonable authorisation and distribution system, promote revenue sharing, reduce transaction costs, and promote a virtuous cycle of creation and dissemination. It is expected that this study can provide a useful reference for stakeholders in the short video industry, help creators release their creativity within the legal framework, guide platforms to actively fulfil their responsibilities, and promote the continuous improvement of legislation and justice. With the joint efforts of all parties, secondary short videos are expected to flourish on the basis of respecting copyright, contributing to cultural prosperity and industrial progress, and allowing the short video industry to sail towards a more brilliant future on the track of the rule of law.

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