

The Application and Refinement of Fair Use Principles in China's Secondary Creation Short Video Sector

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Abstract: With the rapid advancement of internet technology and the continuous strengthening of the digital trend, short video platforms like Douyin and Weibo have risen rapidly, becoming new channels for content dissemination. Short videos created through secondary creation, such as adaptation, splicing, and editing, meet the personalized needs of the audience by re-creating original works. However, the issue of copyright infringement in secondary creation short videos is becoming increasingly prominent. How to protect the rights of the original authors while promoting cultural innovation and freedom of expression has become an urgent problem to be solved. This article aims to conduct an in-depth study on the fair use of secondary creation short videos, proposing practical suggestions to find a balance between protecting the rights of the original authors and promoting cultural innovation.

1 INTRODUCTION

With the rapid progress of The Times, the trend of digitalization has been significantly enhanced, and traditional media such as newspapers and radio and television are gradually being replaced by digital platforms and emerging communication methods such as Weibo and Douyin. In recent years, many network short video applications have emerged, the capital market's enthusiasm for the short video field continues to rise, the number of content creators in the short video industry has achieved a blowout growth, marking that the industry is entering a new stage of rapid development. According to the data provided by the 2023 China Short Video Industry Market Operation Report, the size of China's short video market has reached 376.52 billion yuan in 2022, an increase of 83.6% compared with the previous year, and it is predicted that the figure will jump to 1,066.08 billion yuan by 2025. At the same time, the 54th Statistical Report on the Development of China's Internet pointed out that as of June 2024, the number of short video users in China has reached 1.05 billion, accounting for 95.5% of all Internet users, and it is expected that this user group will continue to expand in the future, and the short video platform also shows a rapid growth trend, especially on the Douyin platform. 2023 Film and television

entertainment short video account fans growth rate is the most significant(Wei, 2024).

Driven by these new media, the secondary creation of audiovisual works, including adaptation, splicing, editing and other forms, has become a new trend in the field of network communication. Secondary creation refers to the re-creation of a single or multiple works by the audience based on their personal interests and emotional preferences. In this process, the personal views and creations of the creators are integrated, and new forms of works are spawned. Second creation of short video refers to the short video produced by the publisher using the original video materials, such as film and television comprehensive, animation, sports competition and games, etc. Short videos have the following features: They are based on the original video material; The duration is short, usually controlled within 3 minutes; Use a lot of editing, dubbing techniques(Zhang et al, 2023).

Second creation of short video range is wide, covering all types of works. As a new phenomenon of media culture, it breaks the boundary between content consumption and content production, promotes the deep involvement and personalized interpretation of cultural products by individuals, and effectively meets the increasing personalized and deep-level needs of audiences.

With the continuous expansion of short video user base and market scale, the conflict of interest on the second creation of short video gradually surfaced. Although the China Network Audiovisual Program Service Association has issued the "Rules for Online Short Video Content Review Standards" on December 15, 2021, which clearly prohibits unauthorized cutting and adaptation of audiovisual programs and their clips, such as movies, TV dramas, and online movies and TV dramas, relevant disputes still occur frequently due to the limited binding force of the regulations(Cai, 2024). However, some secondary creators arbitrarily dispose of films, TV plays and other works without authorization, or convert them into part of their own works, which infringes on the copyright of the original authors and constitutes double damage to the rights and interests of the original works and their creators. Therefore, in the process of promoting the future development of secondary creation, it is necessary not only to protect the audience's freedom to deconstruct and recreate the original text, but also to effectively protect the copyright of the work and the reputation right of the creator according to law, so as to balance the relationship between innovation protection and the rights and interests of the original.

As a new and dynamic force, the second creation of short video has been widely penetrated into our daily life and become a universal cultural phenomenon. As a new form of cultural expression, the second creation of short video is deeply rooted in the Internet, and the Internet also provides fertile soil for its prosperity.

However, the academic research on the copyright infringement of the second creation short video is still insufficient, and there are many mysteries and disputes to be solved. This paper aims to fill the gap in this research field and deepen the cognition of short video copyright infringement. Through a comprehensive and systematic study, this paper will further reveal the intrinsic nature and operation rules of the infringement problem of secondary creation short video, laying a solid theoretical foundation for subsequent academic research and judicial practice. At the same time, the in-depth discussion of the infringement problem of the second creation of short video will also reveal the challenges and shortcomings of the existing copyright legal system in dealing with this new field. Through the detailed analysis and conclusion of specific cases, this paper will point out the limitations of current laws in defining the scope of reasonable use of short videos created twice and judging the composition of infringement acts. These research results will provide

valuable suggestions for improving the copyright legal system, and promote the legal system to keep pace with The Times and constantly optimize. In addition, the research and demonstration of this paper spans multiple disciplines such as law, communication, information science, etc., and requires comprehensive use of multidisciplinary knowledge and methods for interdisciplinary research. This interdisciplinary research method not only helps to deepen the understanding of the infringement problem of short video, but also promotes the communication and integration between different disciplines, and promotes the development and progress of related disciplines.

2 APPLICATION OF THE FAIR USE PRINCIPLE IN THE INFRINGEMENT DEFENSE OF SECOND CREATION SHORT VIDEO

2.1 The Reasonableness of the Protection of Second Creation Short Video

As a new cultural phenomenon, the protection of the second creation short video has great public interest value. Re-created short videos are often adapted and innovated on the basis of existing works or materials, which contributes to the wide dissemination and sharing of information and enables more people to have access to diversified video content (Li, 2019). Moreover, the production threshold of the second creation short video is low, and its popularization can enrich the public's cultural and entertainment life. The production threshold is low, and the general public can also participate in the creation, which will not only increase the public's sense of participation in cultural products, but also promote the overall cultural literacy of the society(Yao, 2024). Moreover, the second creation of short videos often contains comments and reflections on social phenomena, which can be used as a window to observe and understand the social dynamics, and play an important role in promoting public discussion and improving social awareness.

The protection of re-created short videos can also promote cultural prosperity. Secondary creation is not only a re-use of original works, but also a catalyst for new ones(Xu, 2024). It encourages creators to innovate on the basis of respecting original works,

which can stimulate more creativity and innovation and promote the development of cultural diversity. Through the secondary creation of classic works, some videos can make traditional culture be accepted and loved by the new generation in a way that is closer to modern life, so as to realize cultural inheritance and development.

The second creation of short videos provides a platform for ordinary users to express their own opinions and creativity. The secondary creation of short videos is an important way for individuals to express their opinions and emotions, and it allows creators to freely express their ideas and creativity without infringing on the copyright of others. Everyone has unique ideas and creativity, and through the communication and interaction between creators with different backgrounds and views, the secondary creation of short videos helps to enhance the pluralistic understanding and tolerance of society and promote the harmonious development of society.

2.2 The Principle of Fair Use Is the Focus of Tort Defense of Second Creation Short Video

In the context of the second creation of short videos, the key to judging whether the video constitutes infringement lies in whether it can fall under the scope of the fair use principle. The principle of fair use is an important concept in copyright law, which allows the use of a work without the permission of the copyright owner under certain circumstances to avoid excessive restrictions on creation and the free flow of information. According to Article 24 of China's Copyright Law, fair use includes the use of others' works to introduce, comment on or illustrate a certain issue. The principle of fair use provides a legal basis for the re-creation of short videos, helps alleviate the contradiction between information monopoly and resource sharing, and can promote the healthy development of short video industry(Dong, 2022).

The determination of fair use has become the core standard to determine whether the infringement of the second creation of short video is established. The application of the principle of fair use needs to consider many factors, including the purpose and nature of the work used, the nature of the work used, the quantity and substance of the used part, and the impact of the use on the market value of the original work. In a secondary creation short video, the creator will often cite snippets of the original work to express his opinion or comment, in which case such use may be considered reasonable if the reference is made for non-commercial educational or critical purposes and

does not cause material harm to the market of the original work.

However, the principle of fair use is not an absolute defense, and there is no clear definition on whether the secondary creation of short videos constitutes fair use at present. At the same time, the principle of legal use in China's copyright law also has some problems.

On the one hand, the fair use system can provide a legal "safe harbor" for the second creation of short videos, so as to prevent creators from restricting their freedom of creation due to excessive worries about copyright issues(Wu, 2023). On the other hand, by clarifying the applicable conditions and standards of fair use, the legitimate rights and interests of original authors can be better protected and unreasonable damages to the market value of original works caused by second creation can be avoided(Zhu and Jiang, 2022). Therefore, improving the fair use system is not only the consensus of the academic community, but also the key path to solve the infringement problem of second creation short videos.

3 IMPROVEMENT SUGGESTIONS

3.1 Adopt Both "Enumeration" and General Ways to Supplement the Deficiencies of Enumerative Legislation

By setting a series of factors, such as the nature of the work, the purpose and nature of use, the quantity and substance of use, and the impact of the original market value of the work, etc., to comprehensively judge whether a certain behavior constitutes reasonable use (Dong,2022). Such a legislative model can not only better adapt to the diversification and complexity of the secondary creation of short videos in the Internet era, reduce the gap in the application of law, but also more comprehensively cover the situations that are in line with the original intention of legislation but are not specified in practice.

3.2 Build a Clear and Unified Interpretation Path

By critically absorbing the rational use of the four elements and the conversion use standard, the four elements are comprehensively considered. However,

in the legal order, the four elements rules are located in the Regulations on the Implementation of the Copyright Law, the "three-step inspection method" is located in the copyright law, and the legal order of the four elements is under the "three-step inspection method". In the application rules of "three-step inspection law", the first step is "specific and special circumstances", which is reflected in China's law in 12 specific circumstances and one guarantee clause in Article 24 of the Copyright Law. Four elements rules main role in out clause "other circumstances of laws and administrative regulations" to supplement, make legal reasonable use situation closed become relatively open, but not on the whole out of the "three step inspection" applicable order, while ensuring the stability of the law and do flexible cope with complex reality requirements(Gao, 2023).

3.3 Optimize the Rational Use Mode of Secondary Creation Under the Internet Environment

In the Internet environment, the rational use mode of secondary creation of short video should pay attention to balancing the interests of the creator, the original author and the public. To this end, it is suggested to clarify the reasonable scope of the use of secondary creation works based on the types of secondary creation in the Internet, establish the updating mechanism of secondary creation to solve the problem of legal lag, and at the same time ask the wishes of the original author to ensure that reasonable use will not infringe on the legitimate rights and interests of the original author. In addition, the creators should be encouraged to respect the spirit and essence of the original work in the second creation, to avoid causing unnecessary damage to the original work(Yang, 2023). Through these measures, we can promote cultural innovation and freedom of expression while protecting copyright, and provide legal guarantee for the development of cultural diversity in the Internet era.

4 CONCLUSION

Second innovation, as an emerging cultural phenomenon, has been deep into our life. It relies on the Internet, gets material and inspiration, and spreads quickly. But the openness of the Internet could lead to copyright disputes. Therefore, while encouraging innovation, copyright and creator reputation must be protected to balance innovation and protection. The

principle of rational use is the key mechanism to balance copyright protection and public interest, especially in the secondary creation of short videos. Reasonable use shall meet the conditions such as not affecting the normal use of the original work, not harming the rights and interests of the copyright owner, and having the purpose of appropriate reference. The identification criteria include the "quality" and "quantity" quoted, the purpose and nature of the use, and the influence of the original work. The responsibility of the short video platform also involves the application of the principle of reasonable use. However, due to the limitation of China's legislative model, there are misunderstandings in the principle judgment standard, and the exercise of discretion is uncontrollable. Therefore, the application of the principle of rational use in China is studied and the perfect suggestions are put forward.

AUTHORS CONTRIBUTION

All the authors contributed equally and their names were listed in alphabetical order.

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