

The first short video template infringement case was sentenced, and the short video template is also protected

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Keywords: short video template, copyright, originality, audiovisual works, infringement

Abstract: On April 16, 2021, the first short video template infringement dispute case was judged by the Hangzhou Internet Court. In this case, the short video template was protected by copyright and was deemed to constitute a "similar electrical work" and constituted an infringement of the right of information network communication. On June 1st of that year, the new "Copyright Law" came into effect, and the expression of "electronic works" was discarded. In this article, the author believes that short video templates should be recognized as "audiovisual works" in the new law, and should be protected by copyright law, and the platform's unauthorized upload of short video templates not only constitutes an infringement of the right of information network communication, but also constitutes Violation of the "right of reproduction". In addition, the author believes that the significance of the judicial protection of short video templates lies in its ability to improve the protection of copyright in the field of short videos, increase the creative enthusiasm of short video original creators, and promote the sound and healthy development of the short video industry.

1. Research Background

On April 16, 2021, the Hangzhou Internet Court pronounced on the country's first case involving copyright infringement of short video templates. After a legal analysis, the court ruled that the defendant infringed the plaintiff's information network dissemination rights, and ordered the defendant to immediately stop using the plaintiff's TempoApp to provide the short video in the case. The video template requires the defendant to compensate the plaintiff for economic losses and related reasonable expenses totaling 90,000 yuan.

In the judgment of this case, the court ruled that the plaintiff won the case by using the short video template as a "similar work". In June of the same year, the new "Copyright Law" was implemented. The expression "electronic works" will not appear in the law. Instead, "audiovisual works" will be replaced. Under the new law, whether short video templates constitute works, and What kind of work will the short video template constitute, and what kind of copyright protection will it receive? The author will discuss these issues one by one in this article. In addition, the author here studies short video template infringement issues not only for short video templates, but also intends to promote the copyright protection of more works derived from short videos in the future while analyzing them.

2. Concept and characteristics

2.1 Concept

A short video template is a template that is based on the short video platform, is designed based on the user's experience and needs, and is designed for short video users to apply when making videos. By using a video template, users don't need complicated techniques to make a video, they only need to upload the pictures that need to be used, enter the written text, select the desired music (some websites have their own music), and then they can automatically generate a video. video.

Nowadays, the use of short video templates is more and more common, and short video template software is becoming more and more fierce. Many software stores thousands of templates. These

templates can cover various usage scenarios, including corporate publicity, personal life records, or electronic photo albums, and so on. Users can find the template they need by choosing the classification of the template. In order to enhance the user's experience, some short video template software can also set the visual effects of the added pictures or videos. Users can also add special effects text subtitles. By setting the text display effect, the text matches the picture to make the video more persuasive and vitality.

2.2 feature

Studying the characteristics of short video templates is to better determine the attributes of short video templates, whether they are protected by copyright, whether they belong to works, and what types of works they belong to. After investigation and research, the author believes that the short video templates are characterized by short recording time, clear themes, strong social interaction, and simple production process. The following author will analyze one by one.

The short video template has a short recording time. According to the data of major short video platforms, the recording time of short videos is generally 15 minutes. Compared with other medium and long video platforms such as b-site, Tencent, and iQiyi, the recording time of short videos can be described as extremely short.

The short video template has a clear theme. According to the short video platform, the short video templates have distinct themes and vary. In the first short video template copyright infringement case, the short video template produced by the producer was "Power Generation for Love". In addition, there are various templates on the short video platform, such as various album templates such as stuck, movie-playing, vlog, blockbuster and so on. These templates are widely used by netizens, and the themes are very clear.

The short video template has strong social interaction. In the short video template, the creator arranges various elements such as pictures, music, and special effects to form a short video frame, and reserves elements that can be replaced by other users, so that users can easily replace them to form short videos with personal elements. The short video template allows other users to replace the characteristics of the elements, which enhances communication with network users.

The short video template making process is simplified. The short video template is relatively short in duration and time-consuming, and its process mainly requires the selection and compilation of materials. Therefore, the process is simplified compared with medium and long videos.

3. Analysis of Copyright Issues of Short Video Templates

3.1 The originality of short video templates

Regarding whether the short video template is protected and to what extent it is protected, it mainly lies in the analysis of the nature of the work, the identification of the work type, and the conflict with the original author's copyright rights. The following author will analyze one by one.

4. Attribute identification of short video template works

The pre-revised "Copyright Law" adopted a closed enumeration legislative model. The definition of a work appeared in Article 2 of the "Copyright Implementation Regulations", and Article 3 of the new law introduced the definition that originally appeared in the Regulations into the law and amended it. "Works referred to in this law refer to the intellectual achievements that are original and can be expressed in a certain form in the fields of literature, art, and science." The most important component of the legal works of the new law lies in the identification of originality. The following is the author's analysis of originality:

5. Completed independently by the author

Whether it is done independently by the author is one of the important factors for whether the short video template can be recognized as original. Regarding independent completion, various scholars have different opinions. Wu Handong scholars believe that originality means that a work is produced through independent thinking, and is not or basically not the same as others' work, that is, a work cannot be tampered with, plagiarized or copied from others by any means; Liu Chuntian scholars It advocates originality in form. It refers to the results of the author's selection, selection, arrangement, design, description, and synthesis of a work in the completion of a work. It mainly means that the work is not intercepted from existing patterns. It came from, or was not tampered with, plagiarized or plagiarized from the existing form. It does not pay attention to the original expression of the content and the core of the idea; while the Zheng Sicheng scholars directly adopted the original concept, it did not give it. I have made a specific conceptual definition, but only expressed that the work "cannot be copied, plagiarized, tampered with, or produced by infringing on the copyright of others in other illegal ways, and must be created by the author himself". [1]

The author believes that the definition of "independent completion" of the short video template should adopt the definition of Liu Chuntian scholars. Because the short video template is a kind of visual perception work that can be seen by the naked eye of the viewer, the viewer can achieve a beautiful experience of appreciation and pleasure through watching and listening. It is a kind of "eye" and "ear". "The comprehensive experience of artistic aesthetics is an expression of observability and perceptibility, so the author believes that the short video template should adopt formal originality. That is, the "author's independent completion" of the short video template means that the author himself did not or basically did not carry others' selection, editing, layout, special effects design, music matching and other elements of the short video template material when completing the creation of the short video template. In the first case of short video template infringement, the template "Power Generation for Love" was independently completed by the original author and operated independently by the original author. There was no plagiarism of others' works, and there was no arbitrary tampering, plagiarism, and removal of others. The act of the work. At the same time, his work in this case is a kind of "unique" expression. In summary, the short video template complies with the requirement of "completed independently by the author".

6. Creative

The standard of creativity is formed in the social environment and industry characteristics of an industry. It cannot be arbitrarily copied according to the author's rights system standards of the Common Law system or the copyright theory system of the Continental Law system. It should be combined with actual conditions. The development and improvement of the industry environment and the social environment are not suitable for one size fits all and jump to conclusions. In the following, the author will analyze from two aspects: the conditions that can be objectively identified and the personalized expression.

7. Have the conditions to be objectively identified

The copyright law balances the interests of copyright owners and the public, while the dichotomy of thought and expression is to determine the extension of originality. According to the relevant provisions of the Bernier Convention and the Agreement on Trade-Related Intellectual Property Rights, copyright protects the expression of ideas, not the ideas themselves, and excludes the protection of concepts, procedures, and operating methods. Although our country has not established a law to determine the dichotomy of thought and expression, international treaties are an important source of our country's law. Therefore, the "Trade-related Intellectual Property Agreement" is certainly applicable to our country's law. The expression dichotomy is also often used. [3]

In the dichotomy of thought and expression, copyright law protects the expression of thought, that is, the "shell of thought", the external form of thought-such as music, dance, language, editing,

shooting techniques, and so on. It does not protect ideas, the essence of concepts, and various abstract ideas. Therefore, in the dichotomy system of thought and expression, the so-called originality refers to the originality of the appearance of thought, that is, the condition for being objectively recognized.

Therefore, the condition to be objectively recognized is an important indicator to determine the originality of the short video template. The external conditions of the short video template refer to the selection, extraction, entry, and splicing of the screen materials, editing, rhythm, and music used. Because these activities condense the author's thought expression for the work, they are an externalized form of the author's originality of thought and a way of expression of originality of thought.

8. Personalized expression

In addition to being able to be objectively identified, the "work" also needs to be able to embody the intellectual achievements of the workers. Through the investigation of various short video templates, the author believes that the originality of short video templates may at least be reflected in the following three aspects: the originality of material selection, the arrangement and design of pictures, and the combination of pictures and accompanying sound.

The originality of material selection. Whether it is the creation of short videos or the creation of short video templates, it is necessary for the author to draw materials from reality and use the author's personal thinking and inspiration to create material arrangements and apply them in the production of short videos. The author believes that material selection is the first step in the creation of short video templates, and it is also the most direct and objective step that can be identified. The steps of selecting, extracting, and selecting materials are actually the process of creating around the creator's thoughts and inspirations.

The arrangement and design of the screen. The arrangement and design of the screen is the second step after selecting the material. The arrangement and design of the picture means the length of the time period of the picture, before and after, and how to cut in, transform and other procedures. These are all important manifestations of the creator's inspiration and originality.

Combination work such as picture and accompanying sound. The short video template is a form of screen connection and music card points, which can make users physically and mentally happy, and can well allow users to apply their original materials accordingly. These collocations are also an important original manifestation of the author's initiative and artistic choice.

In summary, the author believes that the originality of the short video template is mainly due to its "objective conditions that can be identified" and "personalized expression." In addition, some people will question its creativity in the "length of work" of the short video template. In this regard, the author believes that the core of identifying a "work" is to express the author's thoughts, emotions and intellectual achievements, and its length does not determine the originality of its work. In the judgment of this case, the judge also held that although the original legal short video template is only eight seconds, because its key elements are uniquely selected, arranged and combined by the author through his intellectual brainpower, an organic "audiovisual whole" is created. ". Therefore, it constitutes a "work" in the legal sense.

8.1 Type identification of short video template works

Regarding what kind of work the short video template belongs to, my country's copyright law has not yet clearly stipulated. In the judgment of this case, the judge regarded the short video template as a "similar work", but the new "Copyright Law" did not have this expression. The new "Copyright Law" replaced the old law with "audiovisual works" for "movie works and works created in a similar way to filming movies". At present, there is no new copyright law implementing regulations to legally interpret "audiovisual works", and the new law separates "photographic works" from "audiovisual works" in the types of works. It can be predicted that the expression in the old law that "film-like works on a certain medium" (the "Implementation Regulations of the Copyright Law") in the old law will not become one of the requirements for the expression of "audiovisual works", and this expression

may become the new law to distinguish between movies and movies. Standards for TV drama works and other audiovisual works.

In the judgment of this case, the judge determined that it is a "quasi-electric work", and its feature of "filming on a certain medium" is somewhat far-fetched, because the production of the short video template is not done through "filming" means, but through network procedures. . It is judged as a "similar work" mainly because it shows a form of continuous dynamic effect. And it is composed of a series of pictures with or without sound, forming a complete and organic audio-visual whole. And this main feature will also be the main feature of audiovisual works, so there is no doubt that short video templates belong to "audiovisual works".

9. Analysis of copyright conflict with original video template

In short video template infringement disputes, the main infringements involved are the right of information network communication, the right of reproduction, the right of adaptation, and the right of compilation. In the first short video template infringement case, Weibo Company v. Face Meng Company, the court ruled that the defendant only infringed the plaintiff's information network dissemination right, and did not constitute an infringement of the right of compilation and adaptation. The court held that it violated the right of reproduction. Has been absorbed by the right of information network dissemination.

Different from the judgment, the author believes that the case infringes the right of reproduction, and the platform permitting users to copy is an infringement of the right of reproduction of the work. The short video template is a template tool made by users that can be used by users to make short videos. Its nature determines that it is a replaceable and reproducible work. Because of this, every user on the platform can make and copy. So such a work that almost every user can copy, and is not a copying act carried out by the platform himself, does the platform constitute an infringement of copy rights?

The author believes that you can refer to the case of Fisher Company v. Dongfang Teaching Aids Company and Yaxun Company for copyright infringement. In this case, the court held that [4] the infringement of the right of reproduction does not require independent implementation, and the licensed reproduction of a certain work also violated the right of reproduction of the work. Therefore, in short video template infringement, the platform deliberately or laissez-faire unauthorized works on the platform for users to copy, will also constitute an infringement of the right of reproduction.

10. Summary

The first case of short video template infringement was a copyright law protection case of a new "work" that emerged during the booming process of the short video industry. In this case, the judge decided that the plaintiff had three main points: constituted works, constituted electronic works, and should not be too high. standard. Although the new "Copyright Law" has been implemented since June this year, the expression "electrical works" will be discarded. However, according to the characteristics of the new law and short video templates, short video templates will still constitute "audiovisual works" and are protected by copyright law.

At the same time, it should be noted that the short video industry is booming, and the resulting infringement issues such as templates, music, and images are also increasing. In recent years, there have been more and more cases of short video disputes, and various typical cases have also promoted copyright. Protect the rich strokes of the painting. On June 5 this year, six film and television companies, including Noon Sunshine Pictures and Xinli Media, also launched a condemnation against short video infringement. They expressed their opposition to infringement, not short video platforms. It can be seen that short videos The resulting series of copyright infringement issues need to be resolved urgently.

Due to the rapid development of the short video industry today, various new disputes will also emerge. They will propose new ideas on how to balance the interest relationship between creation and

dissemination, right holders and network service providers, and the public in judicial practice. Challenge. The typical significance of this case is that it reflects the emerging infringement phenomenon that has emerged after the booming short video industry. The case did not adopt excessively high standards for the protection of short video infringement, mainly to prove that it constitutes a standard of "originality" and constitutes a work. This shows that the short video template, as a part of the short video, is protected by justice. It is more conducive to promoting the creative enthusiasm of short video creators and can well promote the healthy development of the short video industry.

References

- [1] *Sun Fei, Zhang Jing. Research on Short Video Copyright Protection[J]. Electronic Intellectual Property, 2018(05):65-73.*
- [2] *The Supreme People's Court Administrative Ruling (2012) Zhixing Zi No. 38*
- [3] *Xu Jing. Research on Short Video Copyright Issues [D]. Zhejiang University, 2017.*
- [4] *Shanghai Intellectual Property Court (2018) Shanghai 73 Min Zhong No. 268 Civil Judgment*