

Court Discretion in Property Damage Compensation for Personality Rights Infringement

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Abstract: Article 1182 of the Civil Code stipulates the order of application of the return of profits from personality rights. However, in judicial practice, when determining the amount of property damage compensation for personality rights infringement, the court relies too much on discretionary methods, which leads to the court's discretionary application. It is widespread, and because there is no unified standard for the factors to be considered by the courts, it has also caused the problem of different judgments for the same case in practice. In this regard, the application conditions of the court's discretion should be strictly enforced to avoid the expansion of the judge's discretion. At the same time, the application of the court's discretionary considerations should be discussed in categories, which can provide relatively certain guidance for judicial practice.

1. Introduction

Infringement profit return rules were initially common in the field of intellectual property. However, due to the rapid development of self-media such as Tik Tok and Kuaishou in recent years, the commercial use of personality rights has become more common, which has led to the infringement profit return rules in personality. Its application has increased in cases of copyright infringement. Under such circumstances, it is of great significance to discuss how to standardize the court's discretion and determine the amount of property damage compensation for personality rights infringement.

Article 1182 of my country's Civil Code changes the order of application of the rules for the return of profits from infringement in Article 20 of the original Tort Liability Law, eliminating the difference in the order of application between the actual losses suffered by the infringer and the benefits gained by the infringer. The restriction changes the order of the infringed party's claim for loss compensation and the right to claim for the return of profits from the order to free competition, and gives the infringed party a certain right to choose. This fully reflects the autonomy of private law^[1]. At the same time, the court also uses the discretion of the court as a comprehensive compensation method as the last resort. This provision itself should be the last line of defense to protect the personal interests of the infringed person, but in judicial practice, the court has determined that it has been abused. Based on the consideration of judicial efficiency, many infringement cases ultimately adopt the method of discretionary compensation when the losses are unclear and the profits are difficult to prove. The existence of the discretionary method has actually become an impediment for judges to clarify the cases. The abuse of discretion has, to a certain extent, resulted in the weakening of other

forms of compensation, especially liability for profit compensation. Moreover, the court does not have unified measurement standards and relatively certain factors to consider when applying discretionary compensation, which further reduces the scientific nature of the judgment results. Therefore, it is very necessary to clarify the measurement standards and factors to be considered by the court in property damage compensation for personality rights infringement.

2. Judicial application of court discretion in property damage compensation for personality rights infringement

By searching on the China Judgment Documents Network, using "portrait right" or "name right" as the keywords in the case name, we searched for civil judgments between June 1, 2021 and July 31, 2023. A total of 340 cases were randomly selected. Among them, 150 cases are used as samples for this article. Through comparative analysis, the judicial application of the court's discretion in property damage compensation for personality rights infringement in our country is as follows:

2.1 The applicable proportion of statutory compensation is too high

The samples of this article mainly select cases in the past three years, that is, they mainly examine the application of Article 1082 after the implementation of the Civil Code. As shown in Figure 1, among these 150 judicial cases of personality rights infringement, the court supported the proportion of economic compensation for property damage caused by personality rights infringement as high as 97%.³, that is, in 146 cases, the court supported the plaintiff's petition; in these 146 cases The amount of compensation for loss of personal rights and property in the case is all determined by the court at its discretion. No court has determined the amount of compensation based on "the losses suffered by the infringed party or the benefits obtained by the infringer", and the proportion of statutory compensation is 100%. In the damage compensation system, the original intention of the legislators was to use the actual losses of the right holder and the infringement profits of the infringer as the main calculation methods for determining the amount of damages. When these two calculation methods cannot be applied, the court will determine the amount of damages based on the actual situation. However, in cases of damage compensation for personality rights infringement, such a high application rate of statutory compensation deviates from the damage compensation determination model of "actual losses/infringement profits mainly, statutory compensation as a supplement". In fact, it is not that the court failed to strictly follow the pre-procedures stipulated in the law and proactively award statutory compensation ex officio. On the contrary, the infringer did not actively prove the losses he suffered and the benefits gained by the infringer. Only 9 of the 150 cases were In this case, the plaintiff provided evidence for losses or gains, but because "the evidence was insufficient to prove losses and gains," the judge only used it as a reference factor in making a decision. The reasons are: first, there are difficulties in determining the economic value of personality rights in the commercial utilization of personality rights. In reality, the profits of commercial activities are the result of the joint action of multiple factors. To what extent the impact of the infringed rights and interests on the "benefits" obtained by the perpetrators should be considered is a difficult problem in practice^[2]. Second, it is difficult for the infringed party to obtain evidence about the infringer's profits. For example, the infringed party provided the sales volume of infringing products on a certain platform, but the court believes that this sales volume is not necessarily based on the influence of the infringed party. Therefore, the infringed party's evidence on the sales of infringing products is difficult to be accepted. However, in practice, most of the infringed parties can only estimate the infringer's profits from infringement through factors such as the sales price, sales quantity, and product distribution of the infringing products. However, in practice, the amount obtained in this way cannot be used as the actual income of the infringer. This puts the infringed party in a dilemma of proof, and makes the

calculation method of "actual loss/profit from infringement" compensation for personal rights and property damage a formal document.

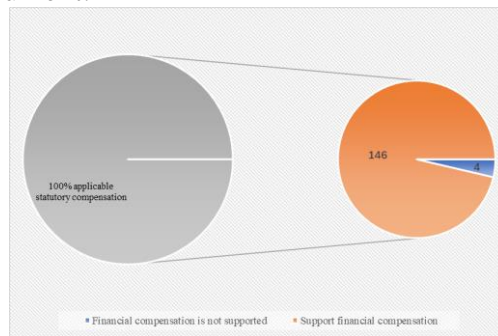


Figure 1: Applicability of statutory compensation

2.2 There are many cases with low compensation amounts

According to Figures 2 and 3, it can be seen that among these 150 cases, 20 cases have a judgment amount of less than 100,000 yuan (including 100,000 yuan); 12 cases have a judgment amount of more than 100,000 yuan and less than 500,000 yuan (including 500,000 yuan). There were 2 cases involving more than 500,000 yuan and less than 1 million yuan (including 1 million yuan); there was 1 case involving more than 1 million yuan, and the largest case was 2 million yuan. 57.1% of the cases were awarded damages of less than 100,000 yuan, and 32 cases were awarded less than 500,000 yuan, accounting for 91.4%. Moreover, the discretionary amount of compensation for ordinary people is concentrated between 1,000 yuan and 50,000 yuan, and the discretionary amount of compensation is between 1,000 yuan and 50,000 yuan for Internet celebrities, bloggers. In the range of 50,000 yuan; for public figures with wide publicity, the discretionary amount is between 1,000 yuan and 2,000,000 yuan, and most of them are in the range of 5,000 yuan to 50,000 yuan. In determining the amount of compensation, most courts believe that the amount of compensation proposed by the infringed party is too high and therefore do not support it. At the same time, the court did not make a clear distinction when determining the amount of people with significantly different commercial values of their personality rights. The low amount of compensation awarded in judicial practice is mainly related to the conservative concept of our courts in determining the amount of compensation, because an excessively high amount of compensation can easily overburden the infringer and put the execution of judicial judgments in trouble. However, the amount of damages awarded is generally low and the commercial value of the moral rights of the infringed person is not considered, making the infringer's infringement cost far less than the profit cost. Such general judgments cannot curb infringement and are contrary to legislation.

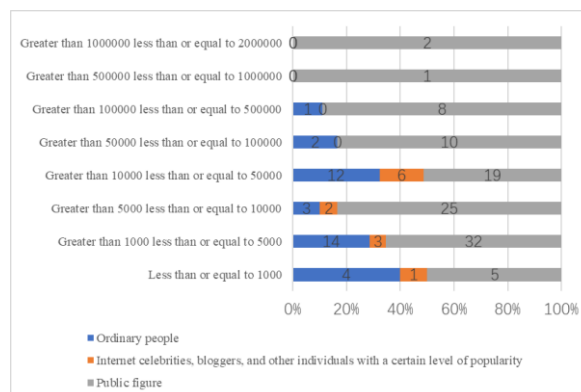


Figure 2: Court supports the amount of property compensation for personality rights infringement

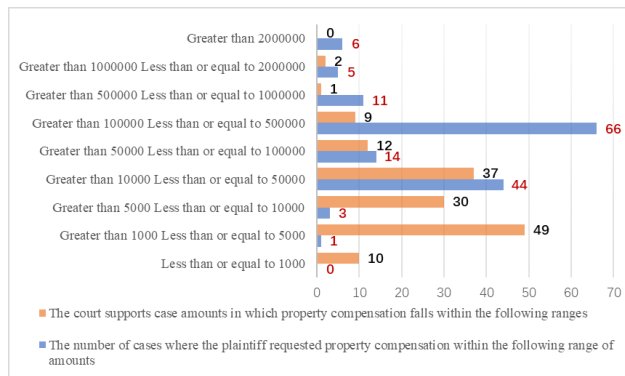


Figure 2: The amount of compensation awarded by the court for different types of infringed parties

2.3 The reference factors determined by the court are mainly infringement elements

As shown in Figure 4: Statistics of the discretionary keywords mentioned by judges in all sample cases in the judgment documents include 352 mentions of infringement essential keywords, accounting for 65% of the total. The main keywords appearing in the judgment documents are mainly They are "infringement", "infringement results", "degree of fault of the infringer", "time and scope of the impact of infringement", etc.; the keywords of damage prevention considerations were mentioned 134 times, accounting for 25% of the total, and are the main key words that appear in the judgment documents The words are "possible profit situation", "sales situation of the goods involved in the case", "endorsement fees", "famousness of the infringed person", "occupation of the infringed person", etc.; the keywords for consideration of damage compensation were mentioned 21 times, accounting for 4% of the total. The main keywords that appear in the judgment documents are "cost of rights protection" and "damage suffered"; the remaining keywords for other factors are 33 times, accounting for 6% of the total. The main keywords that appear in the judgment documents are "occupation of the perpetrator" "Type of goods involved", "economic capacity of the infringer", "local average living standards" and "current market factors". It can be seen from the above statistics that the judge mainly uses traditional infringement elements and "the popularity of the infringed person" as reference factors in the decision-making process; based on the possible profit situation, sales of the goods involved, endorsement fees and the infringed party Damage prevention considerations consisting of occupation and damage compensation considerations consisting of rights protection costs and losses incurred account for only a small part of all cases. These cases are all disputes over the infringement of portrait rights and name rights, but judges rarely use the license fee for portrait rights as a reference factor. The reason is that the endorsement license fee for public figures is too high, and it is difficult for the court to break through the traditional property compensation Amount determination concept.

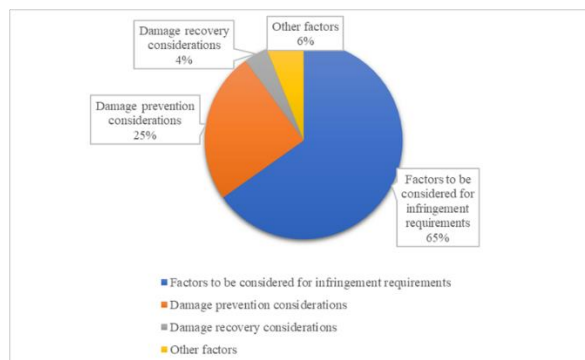


Figure 4: Factors Considered by Courts Pie Chart

3. The issue of determining the amount of damages for profit-based personality rights infringement

3.1 The application order clause of the applicable rules for the return of profits from infringement is in vain

Article 1182 of the Civil Code stipulates that when neither the actual loss nor the gain can be determined, and if the two parties disagree through negotiation, the judge may determine the amount based on the actual situation. According to the content of this article and the original intention of the legislation, statutory compensation should be used as a fallback method to protect the rights and interests of the infringed party when all other methods cannot accurately determine the amount of damages for infringement. However, in practice, statutory compensation is widely used by courts because of its relatively low evidentiary requirements. This article does not specify specific discretionary standards. For example, the law is not clear about what causes should be considered when making a decision, and which factor should be given priority, whether it should be the perpetrator's profits or the specific circumstances of the infringement. Whether the victim can take the initiative to initiate a discretionary procedure without going through the aforementioned methods, and whether the object of the judge's determination is profit or loss, or both, is not clear in law. Judging from the judgments in judicial practice, most judges often mention it in their judgments, or directly quote legal provisions to finally arrive at the amount of compensation. This makes the discretionary power abused and the profit return rules reduced to a written document. It is true that direct determination of economic losses will help reduce the victim's burden of proof. This is equivalent to the fact that in the aforementioned situation where neither the victim's actual losses nor the infringer's profits can be proven, the judge will make a final decision based on the circumstances of the case. The legislators have good intentions, but the actual operation in judicial practice is another matter. Most judges will choose more discretionary methods for the sake of efficiency in handling cases and will not investigate the profits and actual losses of the parties. The author believes that it would be unfair to directly determine economic losses without considering the actual losses and profits of the infringer. Not all losses of the parties involved in the case cannot be determined. In the case where the actual losses and profits can be determined, should still be given priority. A situation that often occurs in practice is that a party claims damages in the form of profits or losses and provides corresponding evidence, but the judge ignores them and directly makes a judgment in the form of discretionary economic losses, and the judgment does not include the reasons and discretion for the determination. The standard must be elaborated in detail. This will lead to the judge's discretionary power being too large and the amount to be determined to be abnormally high and abnormally low. This will lead to the phenomenon of different verdicts for the same case, which may easily cause the parties to have doubts about the court's judgment and judicial decisions. The problem exposed in the judicial practice of the profit return rule is that judges rely on discretionary methods in their judgments. This seems to be an escape from the difficulty of reasoning in the judgment, and the discretionary amount is often low. It will also increase the pressure on higher courts to handle cases and is not conducive to the development of profit return rules.

3.2 Judges lack uniform standards when determining the amount of damages

The rules for the return of profits from infringement stipulate a discretionary maximum limit in the field of intellectual property rights, but currently there are no relevant provisions in the field of personality rights. This causes judges to be more cautious in determining the amount of compensation in practice. And even in most cases, the amount of compensation received by the infringed party is less than the amount of profit made by the infringer. From the logic of adjudication, after an

infringement is established, the adjudicator should first confirm the scope of damages, that is, which damages are compensable damages. Only after confirming the compensable damages can the specific evaluation of compensable damages be carried out^[3]. Judging from the legal provisions, the rules for the return of profits from infringement are different from punitive damages, and compared with traditional compensatory damages, their preventive function is more highlighted^[4]. The clause on the return of profits from infringement takes the losses suffered and the profits gained as the optional basis for the right to claim, so the court should also take the profits gained by the infringer as an important consideration when making a decision, and cannot make repeated evaluations, but based on the comprehensive evaluation based on the degree of influence of each factor on the damage consequences and the causal relationship. In practice, some judges directly use profit status as a discretionary reference factor in determining property damage. This approach is not in line with the original intention of the legislation. First of all, from the perspective of historical interpretation, Article 1182 of the Civil Code has been changed from the "loss-profit-court discretion" progressive method of determining personal property tort liability in Article 20 of the Tort Liability Law to "loss/profit". The original intention of the legislation is to treat property losses and profits from infringement as mutually opposed ways of determining compensation, and the two should have an either-or relationship. Secondly, from the perspective of system interpretation, the article is separated by ";" to separate the two parts before and after, but the whole is one sentence, that is, the logical relationship between the front and back should be inherited from the previous article, and the previous article treats property losses and infringement profits as options. According to the method of determining damages, the court should regard the property loss and the profit from the infringement as two independent parts when making the decision later, and should not use the infringer's profit as a factor in determining the property loss^[5]. When making a determination, the court should first determine the object of the determination, and then make a determination based on the factors that correspond to the selection of the object. The two parts should not be mixed with each other to avoid the tortfeasor bearing excessive property liability.

At the same time, the court's decision on whether to include the license fee as a reference is not uniform in practice. In the "Portrait Rights Dispute between Jia Nailiang and Beijing Hamigua Technology Co., Ltd.", the economic losses claimed by the plaintiff were mainly based on the portrait royalties that the defendant had to pay to it. However, when the judge determined the amount, he did not use the fictitious license. In the case of a dispute over image rights between Zeng Fanqiang and Chen Jianqi Condiment Business Department of Guandu District, Kunming City, Chongqing Zhizhonghe Catering Culture Co., Ltd. the court comprehensively considered factors such as the value of the goods involved in the case, sales status, mode of infringement, scope of impact, etc., as well as specific circumstances such as the plaintiff's endorsement fees, and made a judgment. It adopted the proposed license fee as a reference factor. The way. And according to judicial practice, property damage mainly refers to the subjective fault degree of the perpetrator's infringement, the infringement behavior and its method, the severity and impact of the damage consequences, the popularity of the infringed person, etc. The actor's profits are mainly reflected in the actor's related Increase in property. However, in practice, the considerations are merely enumerated without sufficient reasoning, which is also incompatible with the complexity of judicial practice. For example, in the dispute over the infringement of the portrait rights of a well-known person, in the "Dispute over the portrait rights of First Mingyi (Beijing) Health Management Co., Ltd. The amount of damages will be determined based on the number, scope, purpose, influence of the public account involved and current market factors, and the amount of compensation to the infringer is determined to be 12,000 yuan. However, in the "dispute between Beijing Perfect Creative Technology Co., Ltd. and Tang Yan's portrait rights", the court determined that the amount of compensation was 140,000 yuan. In the two cases, the infringement methods and content of the infringement were similar, but the

amount was more than ten times different, which profoundly illustrates the lack of consistent measurement standards for determining the amount of damages for infringement of personality rights, resulting in the same case.

3.3 The amount of compensation determined is too low, making it difficult to compensate for the losses of the infringed party.

By analyzing multiple cases in practice on damages determined by courts after infringement of personality rights, it can be found that in cases of damages for infringement of personality rights, the amounts determined by courts are generally low, not only lower than the plaintiff's authorization of personality rights. The cost of use is also far lower than the amount of property damage claimed by the plaintiff. The judicial interpretation limits the amount of compensation for damage to personality rights to 500,000 yuan, which actually reflects the low level of discretionary compensation. This problem mainly arises from the following two aspects: First, the provisions of Article 1182 of the Civil Code only mean that when personal rights and interests are infringed, the court can determine the amount of damages through discretion, but how to determine, What standards should be used to make the decision, what factors should be considered when making the decision, and the priority of the factors are all completely dependent on the judge's discretion. Although the amount of compensation claimed by the infringed party is generally relatively high, the "Regulations of the Supreme People's Court on the Trial of Civil Disputes Cases of Infringement of Personal Rights and Interests Using Information Networks" clearly limits the amount to be determined. Therefore, judges are still prudent and conservative in their discretion. The amount of discretion is generally low, and the losses of the infringed party cannot be fully relieved. Secondly, the three compensation methods stipulated in Article 1182 of the Civil Code, regardless of whether Calculating the amount of damages based on actual losses, providing relief to the infringed party based on profit return rules, or determining the amount of compensation at the discretion of the court all convey a legislative purpose, that is, this provision is based on filling up the losses of the infringed party. Rather than awarding punitive damages to the infringer. If the amount determined by the court is too high, it will be misunderstood as punitive damages, which will deviate from the legislative purpose. Therefore, in practice, the amount of compensation for damages to personality rights will be too low, and the relief for the infringed person will be insufficient.

4. Suggestions for improving the determination of the amount of damages for personality rights infringement in my country

4.1 Further tighten the applicable conditions determined by the court

According to the provisions of Article 1182 of the Civil Code, the article clearly stipulates the applicable prerequisites for the court's discretion. First, the infringer has committed an infringement; second, the personality rights of the infringed person have been damaged by the infringer's behavior. ; Third, the infringed party and the infringer filed a petition with the People's Court; Fourth, the evidence provided by the infringer and the infringed party was difficult to prove the benefits obtained and losses suffered; Fifth, the infringed party failed to calculate the property losses. Objection to the choice of method. In other words, only when the victim is still unable to determine the amount of compensation by claiming actual damages and claiming the right to return of profits, the judge will make a discretionary decision based on the actual situation. The Civil Code does not clearly stipulate whether the method of initiation determined by the court should be based on "initiative application by the infringed party" or "initiation by the court ex officio." In this regard, this article believes that if "the infringed party voluntarily applies" as a necessary prerequisite for the court's discretion to

apply, it will hinder the improvement of judicial efficiency and the realization of legislative purposes. Article 287 of the German Civil Procedure Code stipulates that when the parties concerned When there is a dispute over the amount of compensation, the judge may take the initiative to determine the amount of compensation ex officio. The Austrian Civil Procedure Code also clearly stipulates that the judge's discretion to initiate the case shall be upon application and ex officio. However, the court's ex officio initiation must strictly follow the applicable prerequisites and cannot be initiated directly against the parties' expression of intention. This is different from the direct application by the parties. It can be seen that in order to facilitate practical operation, the court shall decide that the judge should take the initiative to open the case when the amount is difficult to estimate or prove, but it must strictly follow the principle of voluntariness and take the initiative to open the case without violating the wishes of the parties. In judicial practice since the promulgation of the Tort Liability Law, many judges have rejected the parties' requests on the grounds that it is "difficult to prove losses" and "difficult to prove profits". So how to exhaust the court's active investigation and evidence collection functions? After full reasoning, Only when it is difficult to prove the loss or gain can the amount be determined ex officio^[6]. At this time, does the court need to obtain the consent of the infringed party when it initiates a discretionary amount of relief ex officio? This article believes that it is not necessary to obtain the consent of the infringed party before starting the discretionary procedure. At this time, both the plaintiff and the defendant have fully presented evidence and cross-examined the evidence. The infringed party has exhausted all means and failed to prove the actual losses and the infringement. If there is a vested interest, then the court determines that the necessary conditions have been met and can directly determine the amount and make a judgment.

4.2 The amount of property losses suffered by the infringed party and the amount of profits made by the perpetrator shall be the objects of determination.

There is still controversy among different scholars regarding the object of the court's discretion: one view is that the object of the court's discretion is the property loss of the infringed party, and the benefits obtained are used as a modification to determine the actual amount of loss of the infringed party. One point of view is that the object of the court's determination is the actor's profits, but it is difficult to use the infringer's profits alone as a factor in the determination. It is often difficult for infringers to obtain the perpetrator's internal business information, and they often bear the consequences of being unfavorable in providing evidence. Therefore, scholars believe that the court can require the infringer to provide relevant evidence based on its authority to determine the amount of profit. This article believes that the objects of the court's discretion should include both the property losses of the infringed party and the profits of the perpetrator. From the perspective of literal interpretation, Article 1182 of the Civil Code also stipulates that "It is difficult to determine the losses suffered by the infringed party and the benefits obtained by the infringer. If the infringed party and the infringer disagree on the amount of compensation, they shall submit to the People's Court. If a lawsuit is filed, the people's court shall determine the amount of compensation based on the actual situation." The "actual situation" shall be based on the "losses suffered by the infringed party" and "the infringer's profit from the infringement" as the reference basis^[7]. According to the above-mentioned alternative application method, the court here should also comprehensively consider the loss and gain, and cannot only make a separate determination on the loss or gain. From the perspective of purpose interpretation, in order to ensure that no one can benefit from infringement, Article 1182 of the Civil Code cannot be determined based solely on damage; at the same time, there are many types of infringements of personality rights in judicial practice. If only Profit is used as the subject of discretion. When the perpetrator himself does not obtain any benefit from the infringement or the profit is small, compensation will only be based on the profit, which is not conducive to the protection

of the rights and interests of the infringed party. Therefore, additional provisions are added for the parties concerned. Negotiation rules and court discretion determined that as a remedy for damage caused by infringement of personality rights, it should make a comprehensive judgment based on the damage and profit, so as to protect the rights and interests of the infringed party and prevent the infringer from benefiting from the infringement.

4.3 Application of typed analysis considerations

When considering the amount of property losses, factors such as damage compensation should be considered, which mainly include damage suffered by the infringement and reasonable expenses to stop the infringement. In the infringement of economic interests in personality rights, the victim usually does not suffer actual property damage, and the damage is mainly reflected in the derogation of the economic value of personality rights. However, such considerations should not be used as the main reference factor, on the one hand because the value of the derogation is difficult to estimate, and on the other hand because the infringement behavior of the infringer may objectively lead to an increase in the commercial value of the infringed person's personality^[8]. The amount of profits gained by the perpetrator is mainly based on damage prevention considerations, which mainly include profits made by the perpetrator and license fees. The preventive nature of compensation mainly focuses on the infringer. By depriving the infringer of his illegal profits, the purpose of preventing the infringer and others in society from committing similar acts is achieved. Prevention is one of the bases of benefit compensation. The proposed license fee is used to "recover" the costs incurred by actors under normal market transactions, maintain the good operation of the market order, and prevent "opportunistic" behavior that exploits the personality rights of others for free. The actor's profits are calculated based on damage prevention considerations, because the judge's decision is based on the actual damage and the infringer's actual profits are difficult to prove. The actual damage of the infringer usually cannot be the basis for the judge to determine the amount of compensation. Although the simulated license fee is the result of the judge's subjective judgment, it has certain calculation standards. In practice, many property interests of personality rights have a relatively stable market. Therefore, its "fictitious benefit" has greater certainty^[9]. German courts adopt a "virtual negotiation" approach in patent infringement. The license fee is based on the amount that a reasonable person would accept when reaching a virtual licensing agreement. That is, the amount that a reasonable person would expect in the future (including the term and extent of patent use, etc.) Negotiate on the basis. Because this method is easier to apply, in patent infringement damage compensation cases, 75% of the parties request the court to decide based on the license fee. In short, it is relatively easy to determine the royalties for fictional licenses. As a basic consideration for judges, it can provide a relatively objective and certain reference standard for the court to determine the amount of compensation. The specific application method should be focused on^[10]. Through the above two consideration methods, the range of the basic compensation amount can be determined. At the same time, Article 998 of the Civil Code can also be used as a reference standard for judges to make decisions. This article stipulates that when determining civil liability for infringement of spiritual personality rights, factors such as the occupation, scope of influence, and degree of fault of the perpetrator and the victim, as well as the purpose, method, and consequences of the behavior, shall be considered^[11]. Therefore, when determining the amount of compensation for property damage to personality rights, factors related to the nature of the tort, such as the degree of fault of the tortfeasor, the manner in which the infringement was carried out, the extent of the impact of the infringement, the duration of the infringement, etc. Just like the subjective state of the tortfeasor in American law is not an element of imputation, it is a consideration in determining the amount of compensation. The above-mentioned typological analysis of the considerations reflects the adjudication purpose of

Article 1182 of the Civil Code more deeply, clearly reflects the scope of application of each consideration, and has a certain degree of rationality.

5. Conclusion

In order to effectively ensure judicial fairness and procedural due process and prevent the occurrence of profit-making from infringement, the court must fully consider the victim's losses and the infringer's profits when determining the amount of compensation. Among them, when determining the amount of the infringer's profits, the court must, factors such as the nature of the infringed rights and interests, the subjective fault of the infringer, the consequences and duration of the infringement, etc. should also be considered to give full play to the preventive function of tort liability. When the court determines the amount of compensation, it should generally determine the approximate amount of compensation based on the proposed license fee and the amount of profits made by the perpetrator, and then based on factors such as compensation for the victim's damage and punishment of the wrongdoer, the court should determine the amount of compensation. The amount of compensation shall be subject to certain adjustments to determine the final amount of compensation. The key to solving the problem of its abuse is not to remove it from legal rules across the board, but to sum up experience from judicial practice and refine the factors that should be considered. The improvement of the law has also prompted judicial organs to conduct more thorough analysis of cases and more powerful interpretations of judgments.

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