

Study on the Dilemma of Copyright Criminal Law Protection and the Optimization Path in the Environment of Network Culture

Naijia Liu

Jilin Justice Officer Academy, Jilin, Changchun 130062, China

Keywords: Network culture, Copyright, Criminal law

Abstract: In the network environment, there have been many new contents in the protection of copyright on the internet, and many changes have taken place in the way copyright infringement has taken place, and the harm caused by copyright crime is more serious. It is not enough to solve serious copyright infringement by means of civil law and administrative means alone, strengthen the protection of copyright criminal law, and strengthen the regulation of copyright crimes. In order to match the abolition of “for profit”, the penalty should strengthen the criminal law protection of the personal rights of works, for those who not only violate the author's work personal rights, but also violate the right to modify the work and protect the integrity of the works of the acts, clearly stipulated as a crime, improve the protection of the personal rights of works. In the network environment can not reduce the threshold of conviction without a bottom line, especially it is not appropriate to cancel the profit-making purpose of the right-to-do crime, in the expansion of the criminal mode should not be impatient, in addition, should further adjust the criminal structure of network copyright crime.

1. Introduction

Copyright is one of the main components of intellectual property rights, in the current generation of knowledge economy and society, copyright has become an extremely important intangible assets and property rights in various countries [1].Corresponding to its own importance, all countries in the world pay full attention to the legal protection of copyright without exception. With the rapid development of China's economy and the continuous progress of network technology, the economic value of copyright is increasing, at the same time, in the process of information conversion, dissemination, diffusion and use, the network copyright infringement incidents emerge endlessly, infringement methods are diverse, the harm caused by copyright infringement is becoming more and more serious, It is urgent to strengthen the protection of copyright criminal law [2].

2. The Status Quo of Copyright Criminal Law Protection in China

China's copyright law provides for 18 types of copyright infringement, i.e. 11 under Article 46 and 8 under Article 47, while only 4 acts are included in the scope of protection under Article 217 of the Criminal Code: “For profit, one of the following copyright infringements, If the amount obtained by law is large or there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years and not more than seven years and shall be fined: (1) reproduction and distribution of his written works, music, films, televisions, video series, computer software and other works without the permission of the copyright owner; (2) publishing books entitled to publishing by others; (3) copying and producing videos produced by him without the permission of the producer of the audio and video recordings; and (4) making and selling works of the name of others. “Analysis of the existing provisions of the criminal law infringement of copyright, we can find the following characteristics: (1)China has established a basic criminallaw protection system [3].copyright-entitled works have been included in the scope of criminal law protection, but the “Copyright Law” provisions and criminal law does not clearly criminalize the behavior of the social harm is no less than the current criminal law has provided for the four types of behavior. (2)The statutory maximum penalty stipulated in China's copyright criminal law is

higher in absolute terms, surpassing that of developed countries such as Germany and France. (3) The amount of illegal income is regarded as the standard of copyright crime and non-crime. (4) The relevant laws and regulations for the protection of copyright, involving less content of criminal sanctions, for all kinds of copyright infringement conviction and sentencing provisions are not sufficient, the crime is also relatively simple. (5) It is difficult to adapt to the latest technical standards, especially the latest technical means in the network age [4].

3. The Protection of Copyright Criminal Law in the Context of Network Culture

3.1 The Push-Style Criminal Legislation and Judicial Practice Break the Concept of Balance of Interests as the Cornerstone of Copyright Law

The balance between the interests of copyright owners and public interests has always been an important topic in copyright protection. Copyright owners' exclusive rights are protected, but copyright law also ensures that the public can enjoy the proper supply of works. Therefore, only copyright law is centered on the public interest, then according to the characteristics of the public property of the work, copyright law must adopt the principle of rational use to balance the public interest and loss related to copyright interests [5].

Prior to the birth of the Network, the use of other people's works for personal appreciation, academic research and other purposes is generally included in the scope of rational use without constituting a crime, the use of the copyright owner's work need not obtain the copyright owner's permission, nor need to pay the copyright owner, in fact, this is based on the public interest considerations of the copyright owner's rights restrictions and restrictions [6]. And because the traditional reproduction and distribution technology is difficult, expensive, so this sporadic copying and other acts on the copyright owner's impact is also minimal, the copyright owner itself can tolerate. But after the advent of the network era, the openness and convenience of technology so that works without the use of tangible carrier fixed can instantly complete the process of replication and dissemination on the Internet, and the impact is wider, lower, less risk, which is a great blow to the rights holders, so a storm-like criminal legislative reform movement began to come under the impetus of copyright interest groups.

3.2 The Application of Criminal Law Has Not Received Significant Effects on Curbing Online Piracy

According to the deterrent hypothesis that the crime rate in legal economics depends on the ratio of risk and income, punishing the perpetrator by severe criminal law will have the effect of curbing the crime, on the one hand, making the perpetrator no longer commit the crime, on the other hand, it also urges the potential criminal to choose the legal act because of fear of punishment after weighing the interests, and to suppress his criminal intention. However, from the actual situation, the effect of curbing network copyright crime through criminal law is not as expected, and the function of punishment is very limited [7].

Even if copyright owners advocate criminal liability, they often point to only those who have the financial capacity of commercial pirates or Internet service providers, a large number of individual pirates are actually outside the severe punishment. The uncertainty of the application of penalties is clearly more people may be lucky psychologically to piracy of high profits or savings in the cost of still take risks [8].

3.3 Diversification of Copyright Infringement Methods in the Network Environment

In the network environment, copyright infringement behavior and the traditional environment of copyright infringement, there have been major changes, mainly the following characteristics: First, the network technology to make infringement more convenient and fast, such as the infringer can through mail and the Network to infringe other people, the infringer can at the same time do not leave home to commit infringement on many objects Acts [9]; And in the form of uploading files to infringe the network dissemination rights and the following file-carrying way of infringement of the

right to copy is more can be completed in the instant of tapping the mouse target; Second, the infringement has a higher technical content than in the past, such as the infringer can change the right holder's technical protection measures and rights management information infringement copyright. Generally speaking, the right holder in the network environment will certainly take certain technical protection measures or set up certain power management information, if destroyed, it will likely make the right holder's work in a state of unprotected and the right holder suffers from multiple infringers. It can be seen that if the criminal law does not sanction serious violations of copyright on the Internet, it will be detrimental to the protection of the rights of copyright rights holders [10].

3.4 Evidence of Copyright Crime in the Network Environment is Difficult in Judicial Practice

Copyright infringement is a kind of intelligent crime. Because of the network's cross-regional and virtual nature, the identity of the infringer is difficult to determine [11].as mentioned above the technical content of the crime may be very high, and not affected by the geographical, so the infringer put forward conclusive evidence of criminal acts, in practice there are certain difficulties. This can be borrowed from the practice of Germany, where the law obliges the public security organs to conduct criminal investigations on the basis of the victim's information and to conduct a criminal investigation when the copyright infringement is told that it has not yet met the amount of the offence. The criminal investigation of public security organs objectively ensures the full utilization of the copyright criminal remedies of the right holderin in order to reduce the difficulty of obtaining evidence from the right holder.

4. Under the Environment of Network Culture, the Protection Measures of Copyright Criminal Law in China

4.1 To Expand the Scope of Criminal Law Protection of the Personal Rights of Works.

In the specific provisions of the law, china's criminal law on the protection of copyright property rights include scopying rights, copyright, distribution rights, and the protection of the personal rights of works only the right to sign art works, the violation of the author's personality rights, fraudulent name and other violations of personal rights, there is no regulation as a crime. In fact, in the network environment, the right holder's personal rights are violated when the loss may sometimes be greater than when the property right is violated. At the same time, the inclusion of copyright's personal rights in the scope of criminal law protection is also conducive to the protection of public benefits, that is, to protect the signature or signature of the trustworthiness. Therefore, it is of great significance to strengthen the criminal law protection of copyright personal rights for the protection of copyright.

4.2 The Database Should Be Included in the Scope of Criminal Law Protection.

The producers of the database have exclusive rights to copy, disseminate, broadcast, broadcast and disseminate to the public in relation to the database or its main part. Database makers have invested a lot of money in the production process, and serious violations of the interests of database producers deserve to be punished by criminal law.

4.3 To the Technical Protection Measures of the Infringement into the Scope of Criminal Law Protection.

Criminal liability should also be investigated for violations of effective technical measures, intentional addition of false rights Management Information and intentional removal and alteration of power management information. Throughout the legislation of various countries, most countries in response to the rapid development of network technology and the revision of copyright law will infringe on effective technical measures, deliberately add false rights management information and deliberately remove, change the power management information and other acts into the scope of criminal law protection.

Of course, the specific legal provisions should also make certain restrictions on the occurrence of

violations, to prevent the excessive expansion of criminal responsibility.

4.4 Increase the Protection of Copyright Criminal Law

In the face of the growing crime of copyright infringement, the most powerful measure is to strengthen the enforcement of criminal law, only in this way can play a better crime prevention effect. To strengthen the enforcement of criminal law can not only stop at the stage of raising the penalty and prescribing new crimes, in the specific practice of our country's judicial, the seized infringing copies and illegal proceeds will be confiscated. The damage caused to the infringer for the reasons of the perpetrator shall be awarded compensation for the loss according to the circumstances. In this case, there is often a situation in which the punished criminal is unable to compensate the infringer's economy. The existence of this situation makes the infringer reluctant to use criminal remedies to protect their copyright, preferring to use civil means to obtain compensation. From the general preventive effect of copyright criminal law, only the provisions of the criminal law more carefully, the law to combat copyright crime more stringent, the legal deterrent has really enhanced, can play a role in curbing copyright infringement crime.

5. Conclusion

Network technology in promoting social progress at the same time also gave birth to a large number of copyright infringement disputes, and serious copyright infringement conviction and sentencing is entirely dependent on criminal law, copyright criminal law protection is the last resort to protect rights holders. The lagging law can't be criminalized for the serious violation of copyright in the network environment, and it is necessary to perfect the criminal law protection of network copyright in time to meet the needs of social development. Although China has made great progress in copyright protection, we should still consider how to adapt to the needs of the network era, and appropriately expand the scope of criminal law protection of the right of writing. Of course, in increasing the protection of criminal law, we should also consider the balance of interests between copyright rights holders, users and the public interest.

References

- [1] Chen Haibin. Research on Criminal Legislation Perfection of Copyright Infringement Crimes in Network Environment. Chinese People's Public Security University. 2019.
- [2] Gu Yongchao. On the Construction of the Substantive Execution Link System of Copyright Crimes in China. China Publishing, no. 19, pp. 39-42, 2018.
- [3] Ma Wenjun. On Criminal Protection of Copyright in China. Graduate School of Chinese Academy of Social Sciences. 2018.
- [4] Zhang Chengzhi. Study on the Legislation of Copyright Infringement in the Network Environment. Guangdong University of Finance and Economics. 2017.
- [5] Wang Tingting. Research on Copyright Crimes and Judicial Empirical Research in China in Recent Five Years. China Publishing House, no. 2, pp. 45-49, 2017.
- [6] Yu Feng, Liu Hui. Research on the Protection of Copyright Criminal Law-- Against the Background of the Third Amendment of the Copyright Law. China Publishing, no. 14, pp. 44-48, 2014.
- [7] Huang Liang. On the Defects and Improvement of Copyright Criminal Legislation in the Internet Age in China. Jingyue Xuebao, no. 3, pp. 85-93, 2014.
- [8] Zhang Xiangyu. Study on Criminal Legislation of Copyright Infringement in the Network Environment. Liaoning University. 2014.
- [9] Zhang Hui. Research on the Criminal Protection of Copyright in the Network Environment.

Journal of Shaoguan University, no. 07, pp. 17-20, 2009.

[10] Wu Liping. On the Criminal Law Protection of Copyright of Internet Works in China. Hunan University. 2005.

[11] Xun Jian. Research on Criminal Law Protection of Copyright. China University of Political Science and Law. 2005.