

Research on TV Program Copyright Infringement and Regulation in the New Era

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ABSTRACT

In the new era, China's TV culture industry is booming, the digital circulation of TV programs is becoming more and more frequent, and the way of copyright transaction is flexible. However, due to the lag of relevant domestic laws and industrial regulations, the frequent occurrence of TV program copyright infringement disputes has seriously reduced the independent innovation ability of the cultural and entertainment industry and affected the healthy development of the cultural industry. Therefore, it is needed to start with the identification and regulation of TV program copyright protection and infringement disputes, analyze the specific behavior of copyright infringement from the perspective of the industry, use the judgment method of copyright law to define the judgment standard of infringement, make up for the loopholes in copyright commercial transactions in the network era and establish a more complete regulation system of TV program copyright infringement on the existing basis, so as to jointly protect the copyright interests of creators and promote the sound development of TV culture industry from the perspective of legal system and industry autonomy.

Keywords: TV program template, Copyright, Industry regulation.

1. INTRODUCTION

With the development of socialism entering a new era, people's demand for cultural and spiritual wealth is rising. Coupled with the continuous development of network informatization, TV programs have become an important part of China's cultural industry. However, the prosperity and diversification of cultural development also lead to frequent infringement disputes in the TV program industry with fierce competition and lack of regulation. For example, many domestic TV programs directly learn from foreign programs without purchasing copyright, and domestic programs are often imitated and copied by other TV platforms. Such infringement will not only lead to aesthetic fatigue and doubt of the public for a certain kind of programs, so as to limit entertainment consumption, but also stifle the creator's motivation and confidence in the continuous innovation of the TV culture industry, affecting the healthy development of the whole TV culture industry. In the face of such industrial chaos, the current intellectual property laws of western countries also lack clear protection of TV program

templates. They mainly protect the copyright interests of manufacturers through the spontaneous formation of industrial regulations in the commercial market. In this context, combined with the domestic intellectual property law environment, this paper analyzes and defines the performance of TV program copyright infringement in the sense of copyright law, and based on the current situation of industry regulation, explores a comprehensive and effective regulation system from the perspective of legal system and industry autonomy, so as to promote the benign trading of copyright business and the healthy development of TV culture industry, On the basis of improving the awareness of intellectual property rights of domestic TV program practitioners, it is important to constantly establish the cultural confidence of local TV cultural program innovation.

2. TV PROGRAMS AND TV PROGRAM COPYRIGHT

As a product of intellectual achievements, although TV programs have not been recognized as works in the current domestic judicial practice and

legislative provisions, and are not protected by the copyright law, theoretically, the author believes that from the perspective of the work attribute of TV program template and the dichotomy of ideological expression, they can be included in the protection scope of the copyright law.

2.1 Work Attribute of TV Program Template

First, confirm that you have the correct template for your paper size. This template has been tailored for output on the A4 paper size. If you are using US letter-sized paper, please close this file and download the file "MSW_USltr_format".

2.1.1 It Belongs to the Field of Art Intelligence

First of all, as an important cultural means for the public to entertain and learn knowledge, TV programs involve music, dance, and poetry and so on. They belong to the field of culture and art, while the intellectual achievement is that natural people create the works they want to express through their own wisdom and mental labor to spread literature and art or scientific ideas. For a TV program, the producer needs to have an insight into the current social hot spots and the needs of various groups, internalize it into the core theme of the program, and then set various specific links such as signs, slogans and rules around its core to form a complete set of TV program templates. Therefore, a TV program template, from the creation of creativity, the setting of scripts and characters, as well as the scene arrangement and music setting of the whole program, reflects the process of the creator's thinking activities of thinking, sorting, creating and arranging the materials in social life. It is the creative intellectual achievement of the creator after careful consideration, rather than simply and mechanically[1]. It can be seen that TV programs meet the characteristics of "intellectual achievements in the field of art".

2.1.2 It Is Original

The originality of the work emphasizes that the author creates the work from scratch through independent thinking, and the work needs to reach a certain creative height and reflect a certain cultural value. Each kind of TV program has its unique program style and theme to express. The setting and arrangement of each object or scene reflects the

different thinking of the creator. In addition, the reason why a TV program is popular is that all the backgrounds, settings and style scripts in its TV program template attract the audience. Whether it is music, poetry, entertainment and variety shows, they convey their unique cultural connotation, are accepted and loved by the public, and enrich the public's spiritual world, which is enough to reflect its creative height and spiritual and cultural value.

2.1.3 It Is Tangible and Reproducible

First of all, the works must be able to be displayed in a tangible way and perceived by the public before they can be copied and disseminated, so as to reflect the cultural and economic value of the works. TV program template is the core structure setting and framework of a TV program. The structure of literary and artistic works is different from the structure of a specific object. It has a certain abstraction. It is the internal structure formed by the creator arranging each element through original thinking. Does this abstract structural framework meet the conditions of tangibility? We can analyze this problem by analogy with the "plot development" of written works. The tangibility of written works is mainly reflected in the specific written expression of character color and story development, and the plot development belongs to its internal structure. In the copyright dispute case of Guo Jingming's "how many flowers fall in a dream" and the copyright infringement dispute case of Huang Jingwen v. Beijing Book Building Co., Ltd., it can be found that in China's judicial practice, the court believes that the original "plot development" can be included in the protection scope of copyright law. The creator creates a unique plot trend by carefully arranging various elements to attract the audience and make the audience deeply feel the author's thoughts and emotions. Therefore, it does not belong to the simple category of "thought", but should belong to the expression of thought. Similarly, although the TV program template as the internal structure of the TV program is not as intuitive as the work itself, the creator's original idea is expressed through a complete structure composed of various elements such as music, picture, graphic font and scene setting. Each type of TV program has different style, theme and expression, which are perceived by the audience in a visible form. This is enough to show that the TV program template is not "thought", but belongs to the category of expression, so it is tangible.

Secondly, the TV program template can be copied in some tangible form. In the international TV program culture market, there are many transactions that copy foreign TV program templates to China by purchasing "copyright", and then make domestic TV programs by changing characters, dialogue and other unnecessary factors, so as to realize the reproduction of TV program templates. At the same time, there are many infringement cases. Without purchasing the copyright, the TV program company copied the TV program template to copy and imitate, made its own TV program, and attracted the audience with the same creative points, which also shows that the TV program template can be copied.

2.2 Dichotomy of Ideological Expression Applicable to TV Program Template

The dichotomy of thought expression is one of the important principles to distinguish the protection scope of copyright law, that is, in order to protect original authors, encourage cultural innovation and balance public interests, copyright law only protects "expression of thought" rather than "thought", which is also one of the reasons why many scholars believe that TV program templates should not be protected by copyright law. As the receiver of the works, the audience can feel the ideological content that the author wants to express through the tangible form. Thought and expression complement each other and are inseparable. Goldstein, an expert in the field of intellectual property, believes that the boundary between thought and expression in the "dichotomy of thought expression" is essentially a degree of thought abstraction, and there is no clear standard to define all works. The more specific the expression of thought, the more it can be defined as "expression" and thus protected by the copyright law. On the contrary, it is defined as "thought" and excluded from the protection scope of the copyright law.

TV program template is the core framework and structure setting of TV program. All themes and details of a TV program are arranged around the TV program template. The TV program template determines the style trend and setting of a program and plays an irreplaceable core role. Many scholars classify the TV program template as an abstract "thought" category, which makes it not protected by the copyright law. In fact, although the TV program template is an abstract framework and setting with a certain ideological height created by the creator, it

conforms to the meaning of "thought". However, as mentioned above, if the TV program template has the attribute of work and can be copied and spread through market transactions, it should not be generally recognized as "thought", because "thought" can not completely cover the meaning and significance of the whole TV program template, but should be recognized as the "expression of thought" extended from thought, and therefore protected by the copyright law, so as to protect the original works of TV programs, so that the copyright infringement of TV programs can be standardized and protected from its core essence.

3. TV PROGRAM COPYRIGHT INFRINGEMENT

After analyzing that the TV program template can belong to the protection scope of copyright law, judging the performance and definition of TV program copyright infringement is an important condition and primary premise for protecting TV copyright and standardizing industry chaos.

3.1 Identification of Infringement in Copyright Law

Article 52 of the newly revised copyright law stipulates 11 forms of infringement that should be held responsible. The infringement of TV program templates mainly involves the following two forms of infringement: Item 5, plagiarizing the works of others; Item 6: without the permission of the copyright owner, a work is used by means of exhibition, shooting or similar shooting methods, or adaptation, translation, annotation, etc., except as otherwise provided in this law.

In 2015, the popular variety show "unlimited challenge" in South Korea sold its copyright to CCTV, while Oriental satellite TV took the lead in shooting and broadcasting the Chinese version of "extreme challenge" without authorization. Some netizens released video screenshots of the two online to accuse the program of plagiarism. Through the comparison of viewers, it can be found that some of the three seasons of extreme challenge copied the game links and scene settings of Korean infinite challenge intact, which should constitute plagiarized works; some issues, after adding some original colors, copy the program element settings of infinite challenge, which should constitute the use of works without permission. Therefore, the common TV program copyright infringement can be divided into the following two types: first, copy

the TV program template intact without purchasing the copyright, or modify the secondary elements to make their own TV program and broadcast. This infringement should constitute plagiarism, and plagiarism actually infringes the copyright owner's right of reproduction and distribution; second, the infringement of using other people's TV program templates and adapting them without consent to make their own TV programs actually infringes the copyright owner's right of adaptation.

Therefore, when the copyright of TV program is copied and used by others without permission, it indicates that the copyright interests such as the reproduction, distribution and adaptation rights of the original author of TV program template have been seriously infringed. After recognizing the specific types of TV program copyright infringement, it is easier to define and regulate such infringement.

3.2 Infringement Judgment Method of Contact Plus Substantial Similarity

Plagiarism and unauthorized adaptation of other people's works and other violations of copyright have seriously damaged the copyright of the originator. Therefore, how to specifically define many forms of copyright infringement such as "plagiarism" and "unauthorized adaptation and use" is very important to regulate the copyright infringement of TV programs.

In China's long-term judicial practice, the main basis for determining infringement in copyright law is "contact + substantive similarity", which was first developed from American case law. Contact refers to whether the author has seen or heard the works of the original author. If an author has been in contact with the original works, even if he has not deliberately imitated, it is likely to be reflected in his works after contacting the original works and absorbing and accepting them as his own thoughts, resulting in substantially similar infringement results. Therefore, "contact" is not only a factual judgment, but also a prerequisite for further judgment of infringement.

Substantive similarity is a key step in the identification of copyright infringement. Only by further refining the identification standards of China's TV program infringement and increasing the illegal cost, can we gradually form an orderly transaction mode in the TV program industry, reduce the occurrence of infringement, and promote the healthy and orderly development of the industry.

Substantive similarity specifically refers to whether the main plot, elements and other parts of the work reflecting the personality of the creator are similar to the original part of the original author, and whether they are enough to make the general public have a similar impression. As a way of mass media, once broadcast, TV program is in the state of public communication. As long as the program is broadcast with copyright in China, domestic authors and manufacturers can easily access the TV program. Therefore, it is relatively simple to judge whether it is "contacted" in a TV program industry. Substantive similarity usually uses the detection method based on abstract test method and supplemented by overall perception method to judge the composition of substantive similarity, so as to define whether there is infringement. The specific methods are as follows.

Abstract testing method is divided into three steps: abstraction, filtering and comparison. Firstly, the abstract judgment of thought and expression of each part in the TV program template. As described in the above chapter, the tangible form that can convey the creator's original ideas in the TV program template should be recognized as expression and included in the protection scope of copyright law. Among them, similar TV programs will inevitably use the same background, theme, allusions or other materials within the scope of public domain as the support of program content in the production process. These factors that do not belong to the protection of copyright law should be excluded first, and the rest should be used as the main part of comparative analysis to judge substantive similarity [2]. For example, although "idol trainee" and "product101" belong to the same music talent show, the producers of "idol trainee" still have extensive creative space after removing the common program theme of "music and dance talent show" and certain talent show rules. They can still express their original thinking on controllable factors such as theme logo, background stage, election system and rule duration, and make their own original TV programs. However, the result of this case is that there are a lot of similarities between the two programs in the main expression elements of the TV program template, such as the overall program style, the rule setting of each link, script scene, dance lighting and other structural settings, as well as the editing of relevant plots. These elements are the important element symbols that distinguish the program from other programs, and the producer of "idol trainee" did not express his original thinking and arrangement on the basis

of original works. Therefore, this similarity can be identified as substantive similarity, and finally identified as copyright infringement of TV programs, which constitutes plagiarism in the sense of copyright law.

The law of overall perception is to judge whether the alleged infringing program is enough to make the ordinary viewers who have watched two TV programs of the same type have similar appreciation feelings from the perspective of the general audience, and then define whether it constitutes substantive similarity. If we don't compare the various elements of idol trainee and product101 one by one, it's not difficult for us to find that after watching the two programs, both programs call a certain number of singing and dancing players for stage performance and competition, and finally select several people to form a group to debut through the rule mechanism of round competition and elimination. Its overall process and characteristics are roughly the same, giving people an intuitive feeling of "reproduction", so that they can intuitively judge that there are substantial similarities between the two. However, the overall perception method has certain subjectivity. It is usually easier and more efficient to use when the case plagiarism is obvious. At the same time, it can also strengthen the auxiliary judgment of substantive similarity through the audience's similar perception on the basis of the abstract test method. If you get the similar perception, it can be recognized as copyright infringement, and the plagiarist should bear the corresponding tort liability for the adverse impact on the original program.

4. DILEMMA OF TV PROGRAM COPYRIGHT PROTECTION

In 2010, Hunan Satellite TV introduced the copyright cooperation program "let's date" from the UK, which immediately aroused the upsurge of "blind date programs". Various TV stations imitate each other, and all kinds of blind date programs emerge one after another. Among them, it triggered disputes such as plagiarism infringement between Hunan Satellite TV's "let's date" and Jiang Su satellite TV's "if you are the one". The two program production teams launched a fierce debate on whether "if you are the one" constitutes plagiarism, each side of which sticks to its own words. Finally, in view of this case, the State Administration of culture, radio, film and television decided to rectify the marriage and dating programs. It can be seen

that these TV program copyright disputes at home and abroad, due to China's failure to establish corresponding laws and regulations, coupled with the difficulty of transnational litigation and high judicial costs, such TV program copyright infringement disputes finally ended. Nowadays, many popular TV programs in China are introduced from abroad. Therefore, in the eyes of TV program audiences and entertainment program consumers at home and abroad, there are a large number of non-original colors in China's TV programs, which not only makes the legitimate rights and interests of creators and copyright buyers not protected by law, but also makes domestic consumers doubt the development and innovation ability of TV culture industry, It is not conducive to adhering to and carrying forward China's cultural self-confidence. In this context, the State Administration of radio, film and television, as the manager of the industry, has also issued relevant measures to curb the current situation of the industry of blindly following the trend of introducing foreign TV programs to a certain extent. However, it is still necessary to further clarify the development ideas of original TV program templates and accelerate the healthy development of TV program industry, which not only depends on the regulation of national macro policies, It is also necessary to build a perfect intellectual property protection system for TV program templates, ensure the rapid development of China's TV industry by means of the rule of law, continuously reduce and regulate TV program infringement, and promote the transformation of China's original high-quality TV programs from input to output as soon as possible [3].

The copyright dispute of TV program mainly lies in the unauthorized imitation and plagiarism of TV program template. TV template is a systematic and comprehensive structural framework formed by the combination of many independent and identifiable elements. It has certain abstraction and repeatability, and can be perceived by the audience through certain objective forms, such as scene setting, stage layout, language style Shooting techniques and other identifiable independent elements [4]. As the key to the disputes in TV program copyright infringement disputes, the TV program template has not been included in the clear protection scope of China's intellectual property laws, and the TV culture industry also lacks an effective management system. Therefore, the interests of TV program practitioners in specific copyright trading activities are difficult to be

guaranteed, which are one of the reasons for the frequent occurrence of TV program copyright infringement disputes.

4.1 Lack of Relevant Legal Protection

First of all, the objects protected by the patent law are inventions, utility models and designs. As a rule and method of intellectual activity achievements, TV templates cannot be summarized into the protection scope of the patent law. Only when some props and other contents of some TV programs involve patented inventions, they can get the exclusive protection of patent authorization [5]. As mentioned in the first chapter, TV program templates do not belong to the eight categories of protected objects expressly stipulated in China's copyright law, while the ninth category of "other intellectual achievements in line with the characteristics of works" belongs to the bottom clause. There are different opinions on whether TV program templates meet the characteristics of works, which makes the protection of TV templates in copyright law full of uncertainty. In this way, the TV program template cannot be regulated and protected by domestic laws as a whole. Therefore, infringement disputes such as plagiarism and reproduction continue to occur. Secondly, in practice, there are few cases in which infringement disputes over TV program templates can really be brought to court in China. A TV program template is composed of many identifiable elements. Plagiarists can change the secondary elements to distinguish the imitation version from the original program, but the overall outline skeleton and style theme remain unchanged. How to identify some changed TV templates as plagiarism infringement? How much similarity or in which key parts can be identified as plagiarism? It is also difficult for judges to give a clear answer in the case. In addition to the lack of the above-mentioned legislative regulation, the standard for identifying TV program template infringement still needs to be further explored in practice.

4.2 Lack of Industry Self-discipline System

All kinds of TV programs can produce extremely high economic benefits in the context of the new era of the Internet. Therefore, many producers are used to "taking doctrine". By imitating the creativity of foreign popular TV programs, they occupy a high market and economic benefits in China. For example, they introduce foreign TV programs such as "product101" from

South Korea and "the voice of..." from the Netherlands, and then produce the "Chinese version" by changing the name and specific characters. Driven by economic benefits, the lack of local cultural creativity and the lack of industry constraints, domestic TV program copyright infringement disputes occur frequently, and the rights and interests of the original authors of cultural programs cannot be protected. Therefore, in addition to the above-mentioned regulations, we should also establish and improve the industry norms of the TV industry and strengthen self-regulated management, so as to urge practitioners to create more and better local TV programs based on China's cultural heritage and the actual needs of the market, and more effectively supplement the deficiencies of legal protection.

5. COUNTERMEASURES AND SUGGESTIONS ON PERFECTING THE COPYRIGHT PROTECTION OF TV PROGRAMS

Compared with the west, the copyright protection of TV programs in China has just started, and the corresponding theory and practice need to be strengthened. The regulation of TV program copyright infringement should be based on all levels of legal system and market, accurately grasp the cultural and commercial value of TV program template, combine macro and micro, and establish an effective and feasible regulation system of TV program copyright protection.

5.1 Expanding the Object of Copyright Protection at the Legal Level

With the rapid development of social and cultural industries, people's spiritual and cultural needs are rising, and the results of intellectual activities also show more and more forms of expression. China's copyright law stipulates the protected works and their types, and explains the scope of works. However, today is a new era of unprecedented development of information network. Facing the vigorous development of TV industry, the copyright law also shows a certain lag, which is disconnected from the industrial demand. Therefore, first of all, we should expand the protection object of copyright law from the legislative level, and bring the TV program template into the scope of works as a whole for clear protection, so as to regulate the copyright infringement of TV programs from the legislative source, improve the cultural value of literary and artistic works such as

TV programs, and reduce the occurrence of infringement disputes. Secondly, as a new type of works, TV program template has strong commercial value and transaction nature. TV program template should be included in the protection scope of copyright law. At the same time, relevant systems such as the expression form of program mode, creative subject and transaction cost should be improved, so as to provide more institutional guarantee and legal basis for TV program template to trade in the international market, Promote sound trading in the cultural market.

As the first step of identifying infringement and regulating TV program market transactions, the identification of infringement judgment standard is very important in judicial practice. First of all, the judgment basis of "contact + substantive similarity" is repeatedly applied in the judicial practice of copyright infringement cases in China, and the judgment of "substantive similarity" should analyze each specific expression element in the TV program template, grasp the standard of infringement in the degree of similarity between the primary and secondary elements, which has a certain subjectivity and gives judges greater discretion. Therefore, we should further clarify the standards of "originality" and "substantive similarity" of TV program template works in judicial practice, and combine the "Abstract Test Method" with the "overall perception method", so as to avoid the application of a single standard, which will give the judicial organ too much discretion, thus affecting the fairness and accuracy of case judgment. Secondly, it is necessary to clarify the specific infringement identification matters of the unified program model, including whether there are reasonable use in the copyright law, specific forms of infringement and similarity limits when identifying the copyright infringement of TV programs [6]. Further clarify the identification of infringement and the identification of exceptions in judicial practice through specific cases to form a unified identification standard of TV program copyright infringement. At the same time, it should have certain flexibility. In case of special cases or involving new technology, it is necessary to use the judgment standard to analyze the specific situation, try to ensure the justice of the case and safeguard the legitimate interests of each originator, and crack down on the illegal acts of plagiarism infringers.

5.2 Building a Comprehensive Copyright Protection System Within the Industry

With the rapid development of network technology and new media, TV program industry occupies an increasing proportion in the cultural industry market and plays an important role in people's daily life. While gradually improving the legislative and judicial system, the autonomy system within the TV industry is directly related to the TV program transaction. Therefore, standardizing the market transaction system of TV program template and establishing a comprehensive copyright protection system are important steps to regulate copyright infringement.

TV program manufacturers are prone to take chances in the TV program template market transactions. They believe that modifying the secondary factors can directly steal the TV program template of other companies, save the cost of copyright purchase, or use the piracy market to buy the copyright of each program at a low price. Therefore, first of all, we should establish a third-party supervision platform within the industry, cooperate with the market supervision and management department to strengthen the supervision of manufacturers in copyright trading, ensure the purchase of program copyright through normal commercial channels, and use big data to establish a professional trading platform in template creation, program manufacturing, market trading and other links, standardize the price and form of trading, and form a strict supervision system in each link. In this way, it can not only curb the manufacturer's infringement, but also more effectively help the injured party protect their rights, use external forces to improve the copyright awareness of TV program manufacturers, consciously standardize the transaction process, abide by professional ethics, and curb the plagiarism of program models from the source. Secondly, relevant social groups or organizations can be established to play the role of non-governmental organizations and industry associations, and regular symposiums can be held to help creators protect their rights and solve some problems in the practice of copyright trading [7]. At the same time, we should strengthen publicity within the industry, encourage manufacturers to innovate independently, and carry out positive creative guidance of original programs, such as Chinese poetry conference, Chinese character hero and other excellent original TV programs based on local culture, which are worthy of deep learning

and thinking by Chinese TV program practitioners. China has a unique and profound historical and cultural heritage of 5000 years. While raising the awareness of intellectual property rights, TV culture practitioners should also realize that China's original TV programs also have a far-reaching market. They should explore their own creative ability in combination with local culture, constantly improve the talent introduction system, enhance cultural soft power, and establish cultural confidence within the industry, so as to accelerate the transformation from "importing country" to "exporting country" of TV cultural programs, and constantly improve the quality and international status of China's original TV programs.

6. CONCLUSION

In the Internet era, the TV culture industry has higher and higher requirements for cultural innovation. The TV program template presents a diversified and flexible trading mode, followed by the copyright infringement of competitors who disturb the order of the TV culture industry in order to pursue commercial interests. TV programs occupy a large proportion in the cultural industry in the new era and have high cultural innovation value and commercial innovation value. Therefore, establishing a set of comprehensive and effective protection regulations for the copyright protection of TV program templates is not only an important aspect of intellectual property protection, but also an important means to safeguard the economic interests of TV program creators and promote the sound development of TV cultural industry. In the future, we should correctly use the copyright law and the infringement judgment standard of judicial practice, accurately define the infringement of various TV program templates, and gradually establish the infringement recognition standard and effective industry regulation and protection system from the two levels of legal system and industry autonomy. In the context of the new era, whether introducing foreign excellent TV program templates or increasing innovation of local TV programs, it is important to establish industry self-discipline and cultural self-confidence with more standardized copyright trading rules, form a comprehensive TV program copyright protection system from inside to outside, jointly maintain a good TV cultural creation environment and promote the prosperity and development of cultural industry and commercial copyright.

AUTHORS' CONTRIBUTIONS

This paper is independently completed by Jiaqi Zhang.

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