

# Research on the Protection of Performers' Rights in the Network Platform

Fan Liu\*

Department of Law, Anhui University of Finance and Economics, Bengbu, 233000, China  
1542369334@qq.com

\*Corresponding author

**Abstract:** *The rapid development of the internet industry has brought great convenience to people's lives, and people are used to using the internet to disseminate information and access resources. Once a performer's work reaches the internet, it is widely disseminated and may become an overnight success. However, the hidden infringement of the seeming fame and fortune must be taken into account. In order to protect the rights of performers effectively, it is necessary to start with the problems that exist in the protection of performers' rights in China and find countermeasures in the problems.*

**Keywords:** *Performer's rights, Second creation behaviour, Network platform liability, Public awareness*

## 1. Introduction

With the development of society, people's pursuit of spiritual and cultural life is getting higher and higher, and there are many kinds of performance works such as movies, dramas, stage plays and songs for people to choose from. Whether it is during the leisure time after work or to relax during the intense work, performance works are the first choice of most people and they have become an indispensable part of our lives. In today's fast-paced life, few people choose to watch a written work, and without the performer's genuine interpretation, some of the best works of literature and art may be missed, which is a pity.

The rights of performers in China are set out in Article 38 of the Copyright Law of the People's Republic of China, which provides for six rights, including the personal and economic rights of performers. However, in today's information network environment, the performer's rights protected by copyright law are under a new and stronger impact. The ubiquitous public free resources of the latest film and television works on the internet, the widespread circulation of live fan shots of concerts, and the distortion of the image of the performance by secondary creation are the most pressing infringements of the performer's rights in the information network environment. The widespread infringement of performers' rights shows that, in reality, the protection of performers' rights is far from the ideal state that legislators seek. Therefore, in order to strengthen the protection of performers' rights and promote the prosperous development of the performing arts industry, it is necessary to make more detailed provisions based on the current state of legal protection of performers' rights, and to adopt corresponding measures to overcome the problems encountered in the reality of performers' rights, as well as to guide the public so that they can establish the correct values for the protection of performers' rights.

## 2. Overview of Performers' rights

### 2.1. The Concept of Performer

A performer is someone who performs for an audience, and from the point of view of the general public, it is possible to make simple distinctions in everyday life, and there is no need to define them strictly. When it comes to the legal aspects, a clear definition is required. China's Copyright Law has not yet clearly defined a performer, and the definition of a performer is only stated in Article 5 of the Regulations on the Implementation of the Copyright Law of the People's Republic of China, which states that a performer is an actor, a performance unit or other person who performs literary or artistic works, including performance units.

The definition of performer, as clarified in the 2014 Draft Amendment for Examination, refers to a natural person who performs literary and artistic works or folk literary and artistic expressions by reciting, singing, playing and other means. The scope of performers was limited to natural persons, and the objects of performance included literary and artistic works and folk literary art. Unfortunately, this definition was not adopted in the Copyright Law, which was finally revised and implemented on 1 June 2021, so the definition in the Implementing Regulations of the Copyright Law is still used in legal practice, which includes performance units in the scope of performers. However, there is still controversy whether we can consider a performance unit as a performer[1-4].

## **2.2. The Concept of Performer's rights**

Performers have been around for a long time, but the protection of performers' rights came about with the advancement of science and technology and the invention of communication tools. When a performer's performance is fixed, it spreads more quickly than a live performance and is more likely to be infringed, thus bringing performers' rights into the public eye. The rights protected by law arising from the performance of a literary work by means of the individual's body, speech or other means are the performers' rights. The act of performance is the art of transforming a written work into a performance by recreating it on the basis of an existing work. The performer has to use his or her own image, body movements, voice, etc. to perform. In China, the protection of performers' rights actually falls under the protection of neighbouring rights to copyright, as the exercise of the performers' rights in question also takes place with the permission of the copyright owner. Such a provision stems from the fact that performance acts are generally based on certain written creations, which are original in nature, and that performance acts based on written works are in fact equivalent to the dissemination of the author's ideas.

## **2.3. Constituent Elements of Performers' rights**

### **2.3.1. The Subject of the Right**

The subject of performers' rights is the performer, who is defined as a natural person in the relevant international convention, the Beijing Treaty on Audiovisual Performances, which is now generally accepted internationally. In China, however, the scope of performers extends to natural persons and performance units. The subjectivity of natural persons is unquestionable. A film needs the careful portrayal of actors on top of a rich storyline before it can be called a good film, and a song needs a singer's heartfelt interpretation under the full lyrics before it can be widely circulated, and it is obvious that only a natural person can do the careful portrayal and heartfelt interpretation, and only a natural person can interpret a work perfectly and vividly. In this way, the performer is the link between the work of literature and the public. In performing a work, the performer needs to bring himself or herself into the role or situation and to understand it, and in this process there are certain requirements for the performer's creative consciousness.

There are two main points of view on whether a performance unit as a legal person has the status of a subject. The opponents argue that, on the one hand, international conventions and the legislation of other countries around the world do not include legal persons or other organisations in the category of performers. On the other hand, the act of performance can only be realised through the activities of natural persons, and the performance unit cannot carry out performance activities, so the performance unit cannot be a performer. Supporters argue that in today's environment, natural person performers are always dependent on performance units, actors sign contracts with performance companies, and the companies train individuals for performances, provide performance roles, and package their works. From the beginning of preparation to the final completion of an entire performance work, apart from the performers' brilliant interpretations, the funds and labour paid by performance units and performance organisers also account for a large part. From the viewer's point of view, the quality of the actor's performance determines the quality of the film or TV series, but from the legislator's point of view, it needs to be considered as a whole. It would clearly be unfair to grant performers' rights only to actors. The legislator, for a number of reasons, gave the acting unit a fictitious personality, giving it performer's rights, but also precisely because it is only a fictitious personality in law, it does not enjoy the moral rights enjoyed by natural persons, but only property rights[5-7].

### **2.3.2. The Object of the Right**

The object of the performer's right is the performer's act of performing, which does not have a fixed pattern but is simply a form of expression. The performer's body movements, words, and expressions

can be used to convey the content of the work, which contains the performer's own understanding of the work. They combine the descriptions of the text itself with their own opinions to interpret the work, either on their own or with the help of tools to convey the content of the work to the public in a vivid and imaginative way.

The performer has the right to claim rights for the same performance on different occasions, because each performance is a new performance, the performer's performance is 'alive' and each performance contains the performer's thoughts. A live performance by a singer on TV A must be broadcast with the consent of the singer, and if the singer subsequently performs the same performance on TV B, TV B cannot refuse to pay for the performance because it has already been distributed to the public. If the singer had recorded and broadcast the programme once on TV A, the fact that TV A continued to broadcast the programme on a loop for some time thereafter would not constitute an infringement of the singer's rights. This is because, once the performer's performance has been fixed, subsequent broadcasts of that performance are outside the performer's control.

### ***2.3.3. The Content of the Right***

One is the right to be identified. The right of personhood is the right to identify the performer and is reflected in the fact that when you download a song in any music software and click on the lyric poster, you will invariably see the singer's name below the song title. In live performances, there is usually an announcer at the beginning of the performance who announces the singer and the song, which is a practical use of the performer's identity. In real life, too, when a particular song or dance is a hit, it attracts many imitators to learn it, and when the imitators make their own imitation videos publicly available online, they usually need to identify the original performer. The performance image is not distorted, where the performance image refers to the character portrayed by the performer in the work he or she is performing, and should be distinguished from the performer's private image in real life. When someone distorts the performer's private image in real life, seeking protection under civil law is more appropriate than under copyright law. In a film, the basis for the portrayal of a performance is the scriptwriter's portrayal of the characters in the script, and the performer's understanding of the characters to be portrayed after reading through the script and then portraying them. This means that they create the performance image solely on the basis of the performer's personal image, which is distinct from his or her own[8-10].

The second is the right to property. These include the right to live broadcast, the right to record, the right to reproduce for hire and distribution, and the right to disseminate on the information network. The right to live broadcast means that the performer may receive payment for allowing a live broadcast, which is a one-off fee, although the performer may authorise multiple entities or individuals to broadcast the performance without restriction. The right to record is transferable and is not exclusive to the performer, and the distribution of the benefits arising from the transfer is agreed between the parties. The right to reproduce for hire and distribution is an important right for performers who can earn financial income and increase their social visibility by licensing the reproduction and distribution of their performance. However, with the development of technology, piracy has become an increasingly serious problem, which is detrimental to the interests of performers. The right to disseminate information on the internet is particularly important in the context of the rapid development of the internet, which is fast, complex and global in nature, and where a work is widely disseminated on the internet because it is so exciting, and its performers are rapidly gaining popularity. However, it is also possible that, due to the complexity of the internet, solo performances that should only be broadcast on a particular platform can be seen everywhere. In this context, it is necessary to create this right in law.

## **3. Extraterritorial Examination of the Performer's Rights Protection System in the Online Environment**

### ***3.1. International Legislative Processes for the Protection of Performers' rights***

#### ***3.1.1. Provisions of the Rome Convention***

The rights of performers were first recognised in an international convention in the Rome Convention, and since then, the rights of performers have been taken seriously by all countries. Article 3 of the Convention defines the scope of performers, listing a range of forms of performance, using the term 'other persons' as a backstop, and finally limiting the scope of performers to natural persons who perform literary and artistic works. At the same time, it allows each country to extend the scope of performers' rights beyond natural persons performing literary and artistic works in accordance with its

own laws and regulations. Although the Convention does not deal with the moral rights of performers, it does provide for property rights for performers, including, in particular, the 'right to broadcast, record, reproduce and receive remuneration' under licence. This was significant at a time when recording technology was being developed, but it was not an effective weapon for performers to defend their economic rights as it was too general in its terms, such as "to prevent the possibility of" and similar descriptions, which gave many infringers an excuse.

### ***3.1.2. Provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)***

The Agreement on Trade-Related Aspects of Intellectual Property Rights, also known as the TRIPS Agreement, refines the economic rights of performers, building on the provisions of the Rome Convention. They replaced the term "recording" with "fixing an unfixed performance and reproducing the recording" as admts. Thus, scientific and technological developments have expanded the scope of protection for performers' rights in various ways beyond recording. Like the Rome Convention, the TRIPS Agreement protects only performances fixed in sound recordings, and also does not provide for the moral rights of performers. It should not be overlooked that the most innovative contribution of the TRIPS Agreement to the protection of performers' rights was the extension of the period of protection of performers' rights to 50 years, in line with the trend at the time of technological innovations in reproduction that made reproduction more accessible[11-13].

### ***3.1.3. Provisions of the WIPO Performances and Phonograms Treaty***

The WIPO Performances and Phonograms Treaty, also known as the WPPT, addresses the new issues of copyright protection arising from the use of digital technology in the international Internet environment and is in fact a "neighbouring rights" treaty, providing greater protection for the rights of performers than the Rome Convention and the TRIPS Agreement. The WPPT adds "performance" to the definition of a performer under the Rome Convention, and includes performers of folklore in its scope of protection, which has a positive effect on the protection of folklore. With regard to the economic rights and interests of performers, the vague term "prevent" in the two aforementioned treaties has been abandoned, and it has been clarified in the form of an exclusive right that no one is free to interfere with the economic rights of performers. At the same time, as the information network developed, performers were granted three new property rights: the 'right to distribute', the 'right to rent', and the 'right to make information networks available', thus improving the protection of performers' property rights. The development of information networks has given performers three new property rights: the right to distribute, the right to rent and the right to make information available on the Internet. The protection of performers' personal rights is also an international precedent, giving performers the right to identify themselves as performers and to object to any distortion, alteration or other modification of their performance that would be detrimental to their reputation. These two personal rights are not dependent on economic rights and are transferable and remain after the performer's death until the expiry of his or her economic rights.

### ***3.1.4. Provisions of the Beijing Treaty on Audiovisual Performances***

The Beijing Treaty on Audiovisual Performances, based on the WPPT and taking into account recent phenomena, is the latest international treaty on performers. The treaty responds to the rapid development of information technology by raising the object of performers' rights from "sound recordings" to "audiovisual recordings", which is a major development in the protection of performers' rights. For example, if a Peking Opera performer gives permission to others to record his Peking Opera performance on DVD, and others rip and sell the DVD without permission or upload it to the internet for others to download, the right holder could not rely on any of the above treaties to defend his rights before, and the parties to the treaty were not obliged to provide protection to the right holder, as the DVD was not a sound recording. After the entry into force of the Beijing Treaty on Audiovisual Performances, however, the rights of the right holder can be effectively protected and, in the event of infringement of his rights, he can fully rely on the relevant provisions of the treaty to defend his rights and protect his legitimate interests.

In 2014, China ratified the Treaty, so Chinese performers will be fully and effectively protected within the contracting parties after the Treaty enters into force. The provisions on performers' rights in China's Copyright Law are roughly the same as those in the Beijing Treaty, and there is not much conflict in their application[14].

### ***3.2. The Protection of Performers' rights in Relevant Countries***

#### ***3.2.1. Provisions in Civil Law Countries***

With regard to the scope of the subject matter of performers' rights, Germany's copyright law, for example, provides that the subject matter of performers' rights is divided into actors and performance organisers. In addition, German copyright law distinguishes between ordinary performers and top artists. As different types of performer subjects have emerged in the internet era, it is also extremely easy to pull apart the status and prestige between performers. Ordinary performers need to be coordinated and organised by the performance organiser. But for the top artists, the organisers do not have much room to exploit their activities. French legislation does not distinguish between performers according to their reputation, but between master performers and copy performers, and provides that only the master performer, who is a natural person, has neighbouring rights. This provision is limited in scope compared to the German provision on the subject of performers' rights.

With regard to the economic rights of performers' rights, German law, for example, provides for the protection of the right to remuneration for the use of a performance in "any manner". It also specifies what is meant by 'reasonable remuneration'. It also provides that remuneration may be agreed between the parties and may be modified by the performer if it is unreasonable, but this excludes the case of collective contracts. Japanese legislation distinguishes between a performer's 'right to first remuneration' and 'right to second remuneration' and expressly provides that a performer has the right to be paid for the proceeds of the distribution of his or her performance, whether or not the distribution is commercial in nature. This also significantly protects the economic rights of performers.

The legislative model in civil law systems has shown a more cautious approach when it comes to the regulation of copyright collective management organisations. Special legal provisions are generally used and can be broadly divided into two models. One is to legislate on them separately, for example, Germany has established the Law on the Organization of Collective Management of Copyright, the Agreement on the Strengthening of the Contractual Status of Authors and Performers, and Japan has introduced the Law on Copyright Intermediary Affairs. The other is to provide for the collective management system of copyright as a chapter of the Copyright Law or several articles dedicated to it. After a century of development, each country has established a collective management system for copyright with a more optimal structure and very specific provisions. However, in later years, problems such as low rate of administration, abuse of administration rights and narrow scope of administration have emerged. In China, the collective copyright management system has just entered the legislation, with only two principle provisions in the Copyright Law. But Article 8 has already paved the way for future legislation in the relevant sectors. As the level of collective copyright management improves, the introduction of special legislation is just around the corner. Also with the development of the internet, collective management organisations for performers' rights need to be on the agenda as soon as possible.

#### ***3.2.2. Provisions in Common Law Countries***

The UK was the birthplace of the modern copyright system when the world's first copyright law, the Anna Act, was enacted in 1709. However, due to technological developments, protection of performers' rights in terms of criminal sanctions was not provided until 1925 in the Theatre and Performers Protection Act. However, it was only a passive post facto stop to infringements, but not a proactive prevention beforehand. By the Copyright Act of 1956 there was provision for live public performances, but exclusion of fixed performances. The turning point in the legislation on performers' rights came as a result of European integration, with a series of international treaties such as the TRIPS Agreement and the WPPT, and the relevant EU Directives, which in 1996 established the exclusivity of performers' property rights and granted them certain remuneration rights in the UK. This means that the performer's right was formally established. However, the granting of moral rights such as the right to attribution and the right to protection of the integrity of the work was delayed until 2006. In the UK, performers' rights are divided into property rights and non-property rights, with the latter being unique to the UK. Non-property rights consist mainly of three prohibitions, namely the right of the performer to prohibit others from unlawfully recording, distributing and broadcasting the recording. However, these rights can be transferred from the performer to the producer by way of an exclusive contract. Otherwise, these rights cannot be transferred, but can be inherited upon the performer's death. The main property rights are the right to reproduce, rent, distribute, lend and make available to the public. Performances also have two rights to remuneration, i.e. the right to be paid when the sound recording is broadcast or played to the public and when the rental rights are transferred to the producer of the sound recording or the producer of the film.

The history of the audiovisual industry in the US and the different legal framework in the country make the protection of performers' rights different from that of typical common law countries. Following its accession to the WTO in 1994, the US added a performer's provision that provides performers with property rights but not exclusive rights. This provision is hugely related to the US capitalist system and social contract theory. As far as the subject matter of performer's rights is concerned, US copyright law only recognises the performer of a musical work as the 'author'. The singing and performance of a musical work may also be the subject of copyright protection, but this also means that other performers are not protected exclusively under copyright law as copyright owners. In practice, in the US, the protection of performers relies on the contractual system created by trade associations. Issues relating to the distribution of benefits and rights of performers are negotiated and communicated through contracts between the two interested parties. Over the years, the association has developed a comprehensive and detailed classification of contracts. The remuneration of performers is determined in accordance with the provisions of the most recent contractual cycle negotiated with the Producers' Union. The remuneration is also detailed to the extent that the contract is based on the content and duration of the performance. The remuneration is also subject to the participation of an agent and the participation of understudies and extras. The waiver of the performer's rights and the protection of the right to secondary remuneration are also arranged and protected under the rules of the trade association. It can be seen that while the US does not have detailed federal or local laws protecting performers' rights, its trade associations have taken on a more important role in the protection of performers' rights. By creating sophisticated contractual standards, they have played an important role in protecting the rights of performers and balancing the interests of all parties. This model of regulating all parties in the performer performance industry through the industry's own development could also serve as a model for the protection of performers' rights in China.

#### **4. The Current Situation and Problems of the Performers' rights System in China**

##### ***4.1. Protection Status***

On 1 June 2021, the Copyright Law, as amended by the third discussion, comes into force. As mentioned earlier, China's current Copyright Law grants performers six rights, two of which are personal rights and four of which are property rights. Our performer's rights regime is set out in the Copyright Law and there is no separate legislation, and it is protected as a neighbouring rights regime to copyright. However, the term "neighbouring rights" has not been provided for in the Copyright Law, but has only been studied in legal theory, and the legislator has only introduced "rights relating to copyright" in the amended Copyright Law to outline a series of rights such as performers' rights. The new Copyright Law only introduces "rights related to copyright" to outline a series of rights, such as performers' rights. The new Copyright Law replaces the term "cinematographic works and works created by methods similar to the filming of films" with "audiovisual works" and adds the right to rent out performance works, in line with protecting performers' rights today. In addition, a new section on performance has been added, clarifying the division of rights between the performer and the performing company.

##### ***4.2. Problems with the Protection of Performers' rights in China in the Online Environment***

###### ***4.2.1. Secondary Acts of Creation that Distort the Image of a Character***

In an information network environment, performance works can be disseminated more quickly, which is beneficial for performers to accumulate their nationalities and, if they meet the right moment, they may become an overnight success, as exemplified by the fame of Ding Zhen, the Khampa Hanzi. But as we all know, the internet is also a double-edged sword, and once a work is placed on the internet, there is always a colossal risk that it will be adapted and its image distorted. For example, the B website is full of spoof videos of popular songs or characters from films and TV shows, which are infringements of copyright and distort the image of the performer's performance, regardless of the purpose of the remixer.

From another point of view, although the performance image differs from the personal image of the performer, it is always related to the performer himself, especially the famous performance image that is successfully shaped, such as the mention of the Purple Haze Fairy will think of Hong Kong actress Zhu Yin, and the mention of the Monkey King will first think of Mr Liu Xiaolingtong, for the performer's performance image to a certain extent represents the performer's social evaluation, and also

reflects the commercial value of a performer. For a performer, the image of a performance represents the performer's social rating to a certain extent, and also reflects the commercial value of a performer. For example, in 2019, when Cai Xukun was announced as the NBA's Chinese New Year ambassador, some netizens were dissatisfied with the big gap between his appearance and his image as an athlete, so they spoofed his self-loving introduction in a variety show he took part in before and made a ghost video to satirize it and spread it, some netizens who were unaware of it also followed the trend of spoofing it, making Cai Xukun's social evaluation lower for a long period after endorsing the NBA and affecting his commercial value. The social evaluation was lowered, which affected his commercial value. From the current development of the network environment, "spoof ghost videos" have a tendency to develop and grow, and with the power of the network, when the spoofed performers become "famous", they are indeed infringing on the rights of the performers.

#### **4.2.2. Liability Issues of Online Platforms**

The number of internet users has increased in the information network environment, and the age range is increasing, no longer limited to the younger generation, with computers, tablets and mobile phones becoming almost a household necessity. Most of the information known to the public is got from the Internet, which is fast in spreading, but also complex and changeable, so the network platform has to assume certain responsibilities.

The first issue is the review and downgrading of user uploaded videos by online platforms. As mentioned before, the premise of ghost videos is to be uploaded on online platforms, such as B station, Tencent video, Sina Weibo, etc. It is the platform's obligation to review and approve videos that are negative and violate public morals. However, some ghost videos of performers are circulating on the internet, and besides the large number of video providers, the laxity of online platforms in their vetting obligations is also a major reason for this. When users search for a particular performer, ghost videos are often listed ahead of other types of videos, which facilitate the infringement of performers' rights.

The second online platforms offering performance works without permission. In addition to releasing physical albums, singers release songs on music platforms for people to listen to and download for a fee, which is a way for singers to earn revenue. However, there are cases where music platforms provide song download services with no agreement with the artist, and there are many disputes arising from online platforms providing song download services without permission. Whether the service is a paid download or a free download, there is a deliberate intent for the online platform to gain users and revenue. Internet service providers who make available the works and performances of the right holder through the information network without the permission of the performer are in violation of the performer's right of information network transmission and should be prohibited from doing so.

#### **4.2.3. Lack of Public Awareness of Relevant Laws**

In October 2020, Korea's Big Black responded to the BTS insulting incident by not mentioning their participation in the insulting award ceremony, but pointing out that the video of the BTS group's online concert was circulated on the Chinese internet, causing the group and the company to suffer losses, a response that sparked heated discussions about whether the concert could be recorded and uploaded. Sodagreen frontman Wu Qingfeng also expressed his disapproval of fans taking photos and videos at concerts.

Concert videos are not uncommon on the internet, and when you open most of the apps available for video uploading and search for "so-and-so concert", many videos will appear. In the eyes of the public, there is nothing wrong with fans recording videos at concerts, and the traffic generated by fans viewing the videos on websites will attract more people to come and watch them, which will raise awareness, which is not a bad thing for any performer. It's not uncommon for performers to take into account the feelings of their fans in this regard, and if they are pursued for copyright infringement, they may be taken out of the game, to the detriment of their career, and few performers will take issue with a fan's filming and distribution. However, from a legal point of view, filming a performer's live performance and distributing it without permission is a violation of the performer's rights. For the performer, the number of tickets purchased is a direct reflection of his or her financial gain, as it is common for people to have a tendency to pay to see a show live when they can see it online for free, which directly reduces the performer's financial gain.

Besides the unprofitable distribution by netizens, there is also the widespread use of recorded videos to be burned onto DVDs and sold for financial gain. For example, the Beijing opera performer Chen Yongling v China Records Shanghai infringed the performer's rights when the company filmed

Chen's live performance without her consent and published it on DVD. The judge ordered the defendants to stop the copying and distribution and to pay damages.

## **5. Suggestions for Improving Our Performers' rights System**

The development of the Internet has made the online environment different from the technical environmental conditions on which the circulation of works used to depend. These new technological environments will have a profound impact on the creation and dissemination of performers' rights. These effects will also form the necessary basis for improving the system of protection of performers' rights. On this basis, the market and the law become the alternative means of regulating performers' rights in the online environment. They operate through different mechanisms in the process of dissemination and circulation of works. This is reflected in the fact that the law regulates the protection of performers' rights in the online environment through the coercive power of the state, which is an adjustment to the new characteristics of social relations due to technological changes, and the market, which is an adaptation to the new technological environment and a licensing model for performers' rights that facilitates the circulation of works, thus achieving a balance of interests and benefits.

### ***5.1. Clarify the Determination of Misrepresentation of A Performance***

China's Copyright Law only stipulates that performers may protect their performance image from distortion, but does not provide specific explanations on distortion, and does not have a unified standard to determine what makes up a distortion of the performer's performance image, which is not conducive to the protection of the performance image.

The object of the infringement is the image of the performance created by the performer because of his or her intellectual work, which should be distinguished from the personal image of the performer in his or her daily activities. The distorted image is required to reach a certain level of dissemination. This is because the prerequisite for redress is the creation of damage. If the distortion of the image of the performance is only for self-indulgence and personal enjoyment, it does not destroy the image of the performance in the eyes of the public, which has no potential to reduce the social evaluation and commercial value of the performer, and there is no damage to talk about rights and redress. It is only when the distorted image of the performance is uploaded onto the internet or otherwise disseminated on a wide scale that the damage required under copyright law is considered having been achieved. There is no requirement that the result of the damage occur. Once the damage has occurred, the subsequent remedial measures taken by the performer, because of the specific nature of the industry, cannot be restored in a short period. The distorted image of the performance, even if withdrawn, will remain in the minds of the public for a considerable period. It is therefore sufficient that the misrepresentation suffices to cause damage to the performer's image.

### ***5.2. Improving the Tort Liability of Online Platforms***

#### ***5.2.1. Introduction of Alternative Liability for Online Platforms***

In the online environment, infringements of performers' rights often require the use of online platforms, particularly those that distort the image of the performer and infringe on the performer's right to disseminate information online. It is almost impossible for an infringer to commit an infringing act on their own, and they usually rely on the technical support of online platforms. For example, spoof videos need to be uploaded by the producer before they can be viewed by a wider audience, and even if the performer's performance is recorded, it cannot be disseminated on such a large scale without the use of a network actor. Therefore, although online platforms are sometimes not directly involved in infringement, their acquiescence to users who upload videos is in fact a form of connivance and an aid to infringement.

The provisions on the infringement liability of internet service providers in the Tort Liability Part of China's Civil Code provide for joint and several liability for internet service providers who merely prompt but fail to take the necessary measures and for those who knowingly fail to take the necessary measures for infringing content. To a certain extent, this has a positive effect on the rights and interests of infringed performers. However, the online platform itself is financially superior and has a duty of supervision. They are in a completely advantageous position in relation to the infringer, and their negligent performance of their due diligence obligations is no less harmful than the actions of the network user who uploaded the video. The introduction of vicarious liability for online platforms is



necessary at this point. Although the burden on the ISPs is to a certain extent increased, the benefits of their online distribution cannot be underestimated. Some online platforms may even put more eye-catching spoof videos in prominent positions in order to attract users, which is clearly malicious and this kind of promotion is more severely punished.

### ***5.2.2. Strengthening the Direct Infringement Liability of Online Platforms***

In addition to the uploading of unauthorised videos by internet users, the phenomenon of internet platforms providing unauthorised audio and video recordings for users to play and download online is also a common occurrence. Huang Zheng v. Beijing Watch.com Information Technology Co., Ltd. for infringement of performer's rights, "Yu Quan" sued a network operator in Chongqing, a technology company for infringement of performer's rights, etc. are network platforms in the absence of the plaintiff's authorization, unauthorized to provide the plaintiff's songs paid download service for profit. This is a clear violation of the performer's right to information network dissemination. Another situation is to provide a variety of film and television works free to watch without authorisation, but before watching will force users to watch a certain time of advertising, advertising will have a large number of listeners, the network platform to obtain advertising revenue. This is also an infringement of the rights of performers. This is the case with the TV and film book. Either way, the network platform has knowingly infringed for profit without authorisation, which is subjective and should be severely punished. The Copyright Act could increase the penalties accordingly, and the relevant authorities could confiscate part or even all of the economic income thus obtained by the online platform and then impose a high level of financial compensation on the person concerned. Only by increasing the cost of infringement and discouraging infringers can infringement be effectively controlled.

### ***5.3. Strengthening Enforcement Publicity***

Fans' filming and distribution of live concerts, the public's pursuit of free pirated films and videos, and netizens' following of ghost videos all stem from a lack of proper public awareness of performers' rights. In most people's eyes, the performance industry is an industry that pays huge sums of money and gives performers a higher social status than the general public. They therefore ignore the legitimate needs of performers to protect their rights and interests. This is indicative of the lack of public awareness of intellectual property rights in China.

To change the public's lack of proper awareness of performers' rights, we need to start from two aspects. One is to strengthen the publicity of performers' rights, and the other is to strengthen enforcement. Through these two approaches, the public will be able to form a correct understanding of performers' rights and be able to simply identify infringements of performers' rights in the online environment. On the one hand, the relevant administrative authorities should use a variety of channels to inform the public about performers' rights. For example, they should include information about performers' rights in their legal education programmes and produce short videos to promote them on the internet. The public should be made aware of the relevant laws. The Supreme Court's live webcast of Sun Nan's trial for infringement of his performer's rights is an excellent start. By allowing the public to watch the proceedings themselves, they will be able to appreciate the existence of performer's rights through the words of the lawyers and judges on both sides. On the other hand, there is a need for the relevant administrative enforcement authorities to further strengthen their enforcement efforts. This will not only be effective in combating infringements of performers' rights, but will also have a strong deterrent effect on the public. The public will be deterred by the seriousness of enforcement activities and will appreciate the importance of respecting performers' rights. The relevant authorities can also take the form of announcements to the public on a regular basis, so that open and transparent enforcement is more effective. This approach is more likely to appeal to the public to respect performers' rights and change their misconceptions. It also promotes a proper understanding of the formation of performers' rights by the public.

## **6. Conclusions**

Performers provide a bridge between the work and the public, and greatly facilitate the dissemination of the original work. Performances also contain the rich fruits of the performer's labour. Protecting the rights and interests of performers is therefore a way of respecting the fruits of their work. The rapid development of internet technology has made it easier and faster for people to access resources, and many unknown performers have become known to the public overnight. However, the ease of access to resources has always led to the neglect of the legitimacy of the means by which they

were obtained. This has led to an increase in online copyright infringement, which has had an impact on the performer's rights system. Allowing online infringement to occur is disrespectful to the fruits of performers' labour and will reduce their motivation to create, which is not conducive to the prosperity of China's cultural industry. We should base ourselves on judicial practice, study in depth the various problems encountered by performers in the information network environment, and think from multiple perspectives. This will improve the legal regulation of performers' rights, refine the legal provisions to enhance operability and facilitate judicial practice. At the same time, we should strengthen public education and awareness of intellectual property protection in society, so as to provide a solid guarantee for the development of the cultural and arts industry.

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