

The Study of Infringement Determination Standards for Music Work Cover Behavior—Taking Music Variety Shows as an Example

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Abstract: *At present, people's entertainment lives are becoming more and more rich, and cover behavior in variety shows is also increasing. However, as the entertainment becomes more and more rich, the infringement of music cover behavior is also increasing. The fundamental reason is that the current legislation in our country is insufficient, and people are unable to accurately judge cover behavior. Combining the current legislative status of defining cover behavior infringement standards at home and abroad, taking the cover behavior in current TV programs as an example, this paper analyzes the actual situation of cover standards for music works in China, and puts forward related countermeasures to continuously improve people's awareness of protecting the legitimate rights and interests of copyright holders, establish correct standards for determining whether cover behavior infringes on copyrights, and jointly promote the prosperity and prosperity of the music market in China.*

Keywords: *Music works; Cover behavior; Copyright protection; Recognition standards*

1. Introduction

In recent years, music variety shows have been popular all over the country, and these phenomena fully demonstrate the strong impact of the current network information age on the music market. People's way of enjoying music has changed to streaming music form, and in the era of streaming music, due to the lack of new works, more and more singers began to sing songs in public. But as a result, various internal problems have been exposed to the outside world, and singers and platforms have begun to become involved in music copyright disputes. Many singers are very vague about whether the music works they sing infringe on copyright. Behind these music copyright infringement problems, it not only reflects the unclear definition of singers, but also reflects the current problems of unclear music infringement definition. Regulating the order of the music market and strictly defining the elements of infringement are of great significance for regulating the music market and promoting the prosperity and development of the market.

2. Summary of Covering Music Works

With the rapid development of the economy after reform and opening up, entertainment-oriented lifestyles have gradually become part of people's daily lives. In recent years, the popularity of music variety shows has not only enriched people's leisure lives, but also attracted many singers to participate. However, given the current speed of creating new works, singers have begun to engage in more and more cover behavior in public. In the process of covering, it is inevitable that there will be more or less association with music copyright, and some events may even infringe on copyright.

2.1 Definition and Causes of Covering Music Works

In China's Copyright Law, "music works" refers to "works with or without lyrics that can be sung or played, such as songs and symphonies." The behavior related to "covering" in music works corresponds to the "original singing" of a song. Strictly speaking, covering is not a legal term. Covering refers to the re-singing of a work in one's own style by someone other than the original author, including rewriting the lyrics and arranging the music. Some scholars define covering as the act of a singer modifying and performing someone else's previously published and publicly performed music work according to their own preferences.

Based on the above definitions, it can be seen that to complete a music work cover, two essential conditions must be met. First, the cover work must be published. If the work has not been published, the original singing identity of the work cannot be recognized by the law, and covering cannot be discussed. Second, there must be a performer, or "original singer," on the basis of the work being published. If the basic reference point of the original singer is missing, the cover will naturally fall apart. The increasing number of cover behaviors is mainly due to the following reasons: first, with the continuous development of reform and opening up, popular music has opened people's emotions towards music and stimulated people's imagination for free creation in music, and covers have emerged; second, due to the popularization of live performances and audience participation, more and more people have become interested in singing and have begun to participate in covers; third, with the development of the network, covers can be easily spread, which has led to more and more people participating in covers.

2.2 Types of Covering Music Works

The performance rights of music works belong to the copyright owner and are legally based. Covering without permission and under non-legal circumstances may constitute infringement. However, the ways in which cover behavior is performed are varied, and there are currently two main ways to classify cover behavior:

The first is to classify according to the way the cover artist handles the original work during the cover: it is divided into direct covers and interpretive covers. Direct covers, as the name suggests, are basically faithful to the original song. In addition to the singer's own voice, the song itself is not modified or changed in terms of lyrics, melody, accompaniment, etc. In contrast, interpretive covers are performances that have made significant changes to the original work.

The second is to classify according to the way the cover work is disseminated: it is divided into cover behavior with recorded products, cover behavior in commercial performances, and cover behavior on music websites for covers.

First, there is the behavior of singing a song that has already been recorded. According to the Copyright Law, there are certain requirements for the legal permission of recorded products, and from this law, it can be seen that legal permission for singing a song is based on certain standards: 1) The key center of the singing must be a recording that has been legally publicly released, and it does not include those that are spread through the internet; 2) If the copyright holder needs to make a statement that the song cannot be used, the statement should be issued after the copyright holder completes the recording and can be in various forms; 3) Regardless of whether the consent of the copyright holder is needed, the singer should pay the copyright holder corresponding compensation. Secondly, there is singing in commercial performances. With the rapid development of the economy, the way people entertain themselves is becoming more and more diverse, and various talent shows and concerts are becoming more popular. Currently, there are many singing contests on TV shows, and many amateur or professional singers sing other stars' songs to win applause from the audience and increase popularity. The way music is used in these shows is various and the legal relationships involved in copyright are relatively complex. However, although it is complex, in fact, if the parties or relevant organizations have not obtained authorization and have not given relevant compensation, it will definitely be an infringement of the copyright holder's copyright and must be corrected. Finally, there is singing on websites that specialize in singing. Under the impact of the economy, not only has singing in commercial performances been affected, but also a wave of websites that specialize in singing has been stimulated. Under the rapid impact of the internet, websites like "All-People K-song" and "Sing-Bar" have also appeared. On these websites, each netizen can upload their own singing works and thus gain widespread dissemination.^[1]

3. Theoretical Analysis of Identifying Infringement Standards for Cover Music Works.

Currently, the standards for determining infringement of cover music works are mainly composed of two parts: legal regulations and illegal regulations. Scholars have a unified classification concept for the legal regulations: reasonable use and statutory permission. Discussions on illegal regulations mainly focus on analyzing them according to the method of dissemination.

3.1 Legal basis for legitimate cover of music works

The Copyright Law stipulates the legitimate rights that copyright holders should have, but at the same time, their rights are not unlimited and must be legally restricted. Therefore, the law provides for

reasonable use and statutory license to restrict them. Reasonable use refers to the legal permission for others to use their music works without obtaining the copyright holder's consent and without paying compensation under certain special circumstances. There are legal regulations for reasonable use in China. For example, if a cover performance does not charge the audience and does not give the performer any fees, and the work used in the performance has been published before, this behavior is in compliance with the provisions of "reasonable use." In addition, there are a total of twelve small items such as "reproducing or quoting published works inevitably in newspapers, magazines, radio and television stations, etc. for reporting current events" that are within the scope of reasonable use. Of course, when using this rule, factors such as the impact on the original work should be considered comprehensively, such as when we cover other people's songs in our daily lives. If we do not get paid for the performance and do not charge anyone, and we do not get the copyright holder's consent before covering, even if we adapt the original work during the cover, this is also in line with the relevant "reasonable use" requirements, you can sing with confidence. That is why copyright holders only need to pay attention to the unauthorized commercial use of their works and the use of their works in ways that harm their rights and interests.

The Legal Licensing of recording producers and radio stations is stipulated in Article 42 and Article 46 of the Copyright Law, respectively. The term "Legal Licensing" is limited to the legal licensing of textbooks and the reprinting of newspapers and magazines in the draft amendment of the Copyright Law. It further narrows down the scope of legal licensing compared to the original law. In simpler terms, when compiling textbooks and reprinting newspapers and magazines, the use of these excellent works can be done without obtaining consent from the relevant parties, but if the copyright holder does not grant permission, television and radio stations cannot use the excellent works for free. Through this regulation, it can be seen that the current emphasis is on the conditions for fair use of music and greater respect for the fruits of the labor of copyright holders and their intellectual labor.

3.2 Discussion on the Infringement of Cover Song Behavior

Currently, scholars have discussed the standards for infringement of cover song behavior. Most of them divide cover song behavior into three categories: cover songs that are already recorded, cover songs in commercial performances, and cover songs on music websites. For cover songs that have been recorded, due to the universality and purpose of copyrights, and the necessity of restrictions on them, the law limits the rights of the original copyright holder through statutory licenses. Based on the legislative intent and the discussions of relevant scholars on the definition of infringement, statutory licenses for recorded songs include both direct covers and derivative covers. Furthermore, according to current laws in China, the covers referred to here are only used for the production of recorded songs. If the performance is for the purpose of recording an audio product, it should also be conducted privately and cannot be used for other commercial purposes. For example, if a song is recorded during a commercial performance, the singer's cover song behavior still requires permission from the original copyright holder. Otherwise, it would constitute infringement and bear corresponding legal responsibilities. For cover songs in commercial performances, due to the various forms in which works are involved, China adopts a copyright collective management system and has established the China Audio-Video Copyright Association (CAVCA) to implement a management model of "mainly membership-based, supplementary non-membership-based." To determine whether there is infringement in commercial performances, it is necessary to first observe whether the performer is a member of the CAVCA, and if the cover song work has been registered, the cover singer should request and pay the fee to the CAVCA to avoid infringement. Otherwise, if any of the above conditions are not met, it will be considered as copyright infringement and bear relevant legal responsibilities. If the copyright holder is not a member, the cover singer must obtain permission from the right holder to use it, otherwise it will constitute infringement and bear legal responsibility.

For cover songs on music websites, based on the 12 reasonable use situations stipulated in China's Copyright Law, one of them is "free performance of a published work, where the performance does not charge the public or pay the performer." For this issue, the majority of scholars believe that the standard of judgment should be whether the behavior causes actual harm to the legal interests of the copyright holder, rather than whether it is for profit. However, in cases where it is impossible to determine whether it is for profit, it can be considered whether the behavior has harmed the legitimate rights and interests of the copyright holder. For the cover song business on cover song websites, most scholars believe that the use of the internet to extensively disseminate music works obviously infringes on the copyright holder's right to network communication and performance, and at the same time causes substantial harm to the copyright holder's mechanical performance and wireless network communication, this behavior

should be considered as infringement.

4. Problems and protection strategies related to music infringement standards

4.1 Existing problems

4.1.1 Lack of legislation on the standard for determining infringement of cover songs.

In determining whether a cover song constitutes infringement, although China has formulated the Copyright Law to make relevant regulations and there are also principled requirements for relevant management organizations, in fact, China still lacks valuable and rich experience in protecting music works. This leads to blind spots in determining whether the behavior infringes the rights of the copyright holder, and legal rights cannot be well protected. In terms of legal basis for determining the standard of infringement, the current law does not define cover songs in different situations, which easily leads to ambiguity in judicial practice, resulting in the legal rights and interests of copyright holders not being effectively protected by law.

Additionally, copyright holders sign contracts with the phonographic association, granting them the right to exercise their rights to their own works. However, once authorized, it also means that the copyright holder will give up the corresponding rights within the contract period, and the authorization period and content will be jointly determined by the phonographic association and the user. The copyright holder is unable to participate, and in this case, the work cannot be controlled in their own hands, and based on the lack of relevant laws, the rights to the work cannot be truly protected.

4.1.2 The supervision and review mechanism for copyright infringement in relation to covers is inadequate

A well-established legal system requires an organizational management agency to maintain it, just like the existing copyright protection organizations in the United Kingdom and the United States, China also has its own independent copyright protection organization to strengthen the protection of copyright, namely the China Audio-Video Copyright Association (CAVCA) [2] On closer examination, there are many problems in this area.

First, the organization is obviously administrative. The CAVCA was established under the guidance of the National Copyright Administration, so there will inevitably be administrative command and leadership within it. Based on the artificial mode of control and strong administrative color, it is largely subject to human judgment and cannot play its due role. The judgment of infringement actions is largely subject to the personal thoughts of the executors, resulting in the inability of the copyright owner's legitimate rights and interests to be effectively protected, and the infringers are also unable to be punished by strong legal sanctions.

Second, the operating mechanism is flawed. Currently, China's CAVCA is in a state of unsupervised, and the laws and regulations related to it are even more scarce. For example, in the "Spring" case, the CAVCA failed to fulfill its responsibilities and was unable to effectively protect the copyright owner's legitimate rights and interests, resulting in the need for the copyright owner to stand up and defend their rights. Without multi-party supervision, there will be chaos, and without legal restrictions, the principle of objective and fair management will not be achieved.

4.1.3 Lack of public awareness of copyright protection

Public awareness of copyright protection and moral standards is even more important than laws and development. Looking at all the copyright infringement cases in China, it is not difficult to find that the public's awareness of music copyright protection is relatively vague, which is an important reason why China's music industry has not improved in terms of copyright protection. Even many singers, authors, and other copyright holders are unable to accurately determine whether their own actions are infringing, or some infringers are aware that they are infringing but still have the mentality of not being found by others. Furthermore, some people will not define it as infringement when their own works are covered or changed by others, but only that they feel themselves to be recognized and recognized. Currently, as the country's series of policies begin to gradually improve people's awareness of copyright protection, although there has been progress, there is a situation: the public understands the rights of writers, but does not understand the rights of music composers and lyricists, so the definition of infringement of music and the healthy development of music are still a major obstacle.

4.2 Protection measures

4.2.1 Improve legislation on defining standards for infringement of copyright in covers

In contemporary society, it is a legal state society, legislation is the fundamental guarantee, and the system is the specific implementation. It is certainly the most powerful and important guarantee to be able to formulate a complete and specific legal system to protect it. But sometimes, specific analysis is needed, just like the special block of music cover, given its specificity, related legal system should be singled out, according to the actual situation, the definition standard is more detailed, thus not only makes our legal system more detailed, but also makes the relevant rights effectively protected.

At the same time, the government can also join the whole process of music copyright disputes regulation mechanism, balance the interests of all parties, regulate all problems, provide more detailed regulations for the definition standard, so that the right holders can rely on the law when their rights are infringed, and the copyright infringers can also be effectively and realistically punished.

4.2.2 Strengthening the management of supervision and review mechanisms

As a collective management organization established in China to protect music copyrights and rights holders, there are many loopholes in the actual situation. For example, there is a lack of strict regulations on the relevant legal management of the organization. In this organization, it is necessary to strengthen the relevant legal regulations, clarify the specific allocation of tasks, and implement the specific responsibilities. At the same time, the government can also intervene in the organization through strengthening government intervention, using the government's powerful force to severely crack down on those who infringe on copyrights at will in the market.

In addition to strengthening internal policies, the activities of the organization itself also need to be supervised by external forces. A good management mechanism is not only the presence of good systems, but also external supervision is also particularly important. Strengthening the intervention of various systems in the organization, so that the organization can be fully supervised, so that no one will use rights to pursue personal gain and disrupt the order of the music social market.

4.2.3 Strengthening the public's own copyright awareness

In simple terms, the strength of people's copyright protection awareness determines the level of importance placed on intellectual property in a region or even a country. It is hard to imagine a country with a strong overall copyright protection awareness, but weak awareness among individual citizens. The lack of attention paid to copyright protection by citizens in China has led to a chaotic market and numerous instances of infringement. Therefore, it is important to increase the promotion of legal education and implement it locally and among individuals, so that all citizens can be influenced by the law. By raising citizens' own legal awareness and knowledge, everyone can understand the importance of music copyright.

5. Conclusion

With the continuous development of social science and technology, people's entertainment methods are becoming more and more rich, and the re-singing of music works can be seen everywhere, and the forms shown are also diverse. As citizens of the new era, in order to effectively protect the legitimate rights and interests of copyright holders, both the re-singers and copyright holders should have a further understanding of the standards for infringement of re-singing songs. Correctly and legally use the spiritual labor achievements of others, jointly maintain the continuous improvement and development of intellectual property law, and jointly promote the continuous development and prosperity of the music market.

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