

Construction of the "Notification-Permanent Deletion" Rule of China's Short Video Platform

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Abstract: The advancement of technology can be manifested as a double-edged sword. On the one hand, the rapid development of image synthesis and editing, image processing, and network transmission technology has led to the emergence of a large number of user-generated content (UGC), up the challenge. On the other hand, the development of artificial intelligence and big data technology has also brought convenience to the review of short video infringements, which is conducive to efficient identification and handling of infringements. Constructing a new rule of "Notification-Permanent Deletion" has a realistic basis and a legal basis. Making full use of technology and setting the rights and obligations of video platforms, right holders, and network users while considering reasonable applicable thresholds is conducive to the long-term development of the short video industry.

Keywords: Short video industry, Notifications - Permanent Deletion, Platform Responsibility

1. Introduction

In the context of the rapid development of related technologies such as image synthesis and editing, image processing, network transmission technology, etc. As a result, the video industry is undergoing earth-shaking changes, user-generated content (UGC) is emerging in large quantities, and the era of self-media is coming. The vigorous development of self-media, on the one hand, enables everyone to become a creator and disseminator of content, the speed of information dissemination is greatly improved, and the difficulty of obtaining it is significantly reduced. However, on the other hand, it means that the way of information dissemination has undergone drastic changes compared with the past. The source of information has changed from specialized media organizations to every network user including traditional media organizations. A large amount of even massive information is generated in a short period of time. Compared with media organizations, there are no special content review steps for information posted by ordinary Internet users, and there are no review system regulations. The development of new technologies has not only created a blue ocean for the short video industry, but also brought new developments, and at the same time created challenges to relevant rules, bringing the need to build new rules.

2. Current status and existing rules of the short video industry

2.1. Industry Status

The "2021 China Online Audiovisual Development Research Report" (hereinafter referred to as the "Report") released by the China Online Audiovisual Program Service Association shows that the number of online audiovisual users in China has reached 944 million, and the market size exceeds 600 billion. Among them, short video users reached 873 million, and the market size reached 205.13 billion, accounting for more than one-third of the entire audiovisual industry. The short video industry is also showing new characteristics and trends.

First, the use of mobile Internet is on the rise, and short videos occupy users for a longer time. With the improvement of mobile Internet infrastructure, the functions and user experience of mobile Internet networks have been greatly improved, making it easier for Internet users to use audio-visual software, receive information, and enjoy services on mobile terminals. The short video itself has the characteristics of short time per video, many types, and wide selection, which is more in line with the psychological needs and practical needs of audio-visual users to use it quickly on the mobile terminal and use fragmented time to obtain information. Although the duration of a single short video is short, audiovisual users spend a considerable amount of time on the entire short video, reaching an average of

more than two hours per person per day. This feature has made the short video industry's position in the entire audio-visual industry rise. Setting new rules for the short video industry will have an impact on the entire audio-visual industry.

The second is that short videos have become more attractive to Internet users, and have played a role in "drainage" for the entire audio-visual industry. The "Report" shows that compared with 2020, short videos have attracted more new Internet users, and watching short videos is the second largest factor for new Internet users to use Internet services. At the same time, among many types of online audio-visual services, short video users have the highest degree of loyalty, and more than half of users watch short videos every day. The high-intensity use of short videos in the daily life of Internet users has laid the foundation for them to play a role in attracting traffic to other online video programs such as comprehensive videos and webcasts. More than 60% of the reasons why Internet users watch new online video programs are because they first watched content that aroused users' interest in short video services, which led users to explore new programs. It can be seen that the strong appeal and promotion power of short videos not only gain a larger market share for themselves, but also greatly promote the promotion of online video programs. Short videos have become the foundation of other audio-visual industries. While seeking to increase the number of viewers, short videos also pay attention to user stickiness.

The third is the increase in the amount of user-generated content. The "Report" shows that nearly half of Internet users have uploaded short videos, and the frequency of video uploads has also increased significantly. The reason for this situation is not only because related technologies provide more convenience, but also because of the usage habits of network users. Large companies with strong capital have begun to pay more attention to the development of short video editing tools, and at the same time guide and promote Internet users to use such tools, providing conditions for users to independently create short videos. After years of development, Internet users have become accustomed to expressing their voices and opinions by publishing short videos.

The above characteristics of the short video industry, while significantly promoting the dissemination of information, have also made infringement more common and the need for regulation of infringement more urgent. From January 2019 to October 2020, the 12426 Copyright Monitoring Center (Copyright Monitoring Center of China Copyright Society) was entrusted by rights holders and regulatory authorities to monitor short videos of more than 100,000 original short video authors, the early warning list of the National Copyright Administration of China, and key film and television comprehensive works, covering more than 10 million works, and a total of 30.0952 million suspected infringing short videos have been monitored, involving 2.72 trillion clicks. One of the focuses of the "Jianwang 2021" action is also to strengthen copyright supervision in the short video field. However, similar actions are non-sustainable measures. To ensure that the copyright in the short video field is well protected, it must rely on institutional rules. However, most of the existing rules are products of the web 1.0 era. With the development of web 2.0 and artificial intelligence technology, it is already insufficient to deal with emerging problems[1-2].

2.2. Inadequacies and Difficulties of Existing Rules

Regarding infringement issues in the short video industry, the current regulatory rules are mainly "notice-and-takedown" rules and "red flag rules." The "notice-delete" rule is the basis of the "safe harbor" principle. According to the requirements of the "safe harbor" principle, for network service providers, if they can prove that they have fulfilled the necessary responsibilities and obligations, they will not be responsible for the occurrence of online infringements. If there is bad faith, then you can claim based on this that you do not need to bear the liability for infringement. In fulfilling the necessary responsibilities and obligations, the main support is the network service provider, which has completed relevant work in strict accordance with the "notice-delete" rules. That is, after receiving the notice of online infringement from the rights holder, the corresponding work will be deleted, disconnected and other technical processing is carried out to ensure that the work will not cause continued infringement to the rights holder. Compared with the "notice-and-remove" rule, the "Red Flag Rules" place higher requirements on Internet service providers. That is, in the absence of claims from rights holders, Internet service providers will, for obvious infringing works on their platforms. It should be dealt with proactively. If the work causes damage to the rights holder without taking proactive measures, the network service provider will be held responsible. Because of its more stringent requirements, this rule basically only applies to popular copyrighted works.

The "notice-delete" rule was created in the web1.0 era. It was a rule that was adapted to previous

technical means and resulted from a compromise between the right holder and the network service provider. However, in the current situation it will be a little thin. In the previous situation, most of the information such as short videos came from specific media organizations and were well documented and traceable. It is relatively convenient for rights holders to search for works that infringe upon their rights and file an infringement notification.

However, at present, a large number of works are generated and disseminated from various Internet users, and it is difficult for right holders to search for all infringing works by themselves and protect their rights. While rights holders are at a disadvantage due to technological development, network service providers can gain more benefits. As mentioned above, short videos are the most attractive to network users among all online audio-visual services, and can bring more loyal users to video platforms. Therefore, network service providers will also be happy to use short videos. The control of videos is even more relaxed, and even when rights holders find it difficult to actively claim their rights, they adopt a "turn a blind eye" attitude. For a work that has been claimed by the right holder, after the video platform deletes it, if the original uploader or other network users upload the same or similar work again, it means that if the right holder does not find out in time, the first situation will reappear. In other words, when everyone can become an information source, infringing works can easily reoccur if only one deletion is required. This kind of repeated infringement and repeated rights protection is obviously not conducive to copyright protection and will cause a huge waste of resources. Therefore, it is necessary to construct a new "notification-permanent deletion" rule to avoid the above situation[3-4].

3. The basis for the construction of the "notification-permanent deletion" rule

3.1. Advances in technology

As in other aspects, technological progress can be a double-edged sword. On the one hand, the rapid development of image synthesis and editing, image processing, and network transmission technologies has prompted the emergence of a large number of user-generated content (UGC). The advent of the self-media era has caused drastic changes in the video industry, posing challenges to rights protection. On the other hand, the development of artificial intelligence and big data technology has also brought convenience to the review of short video infringements, which is conducive to efficient identification and handling of infringements.

Major Internet companies, as both network service providers and possible content providers, are very active in using new technologies to deal with infringements and explore ways to use new technologies, and have already had many practices. For example, short video leader Youtube has established a ContentID system, and China's Tencent has developed "video gene comparison technology" and "safe cloud infringing website blocking technology."

It can be seen that technological progress has provided a technical basis for the emergence of new infringement identification systems, and the above systems have also been actually used in reality. The structure of the "notification-permanent deletion" rule will also depend on the development of new technologies.

3.2. The existing review mechanism of short video platforms

At present, network service providers, including short video platforms, have already established content review mechanisms. The existing review mechanisms can provide a basis for the structure of new rules.

The existing review mechanism of short video platforms generally includes two parts, including machine review and manual review. Machine review first plays the role of preliminary screening, mainly dealing with obvious violations. It will review whether the video content uploaded by users complies with legal regulations and whether it involves sensitive topics. At the same time, if the short video platform has established a copyright content library, during the machine review stage, the content uploaded by the user will also be compared with the information in the content library to determine whether there is the possibility of plagiarism in the content library. Manual review handles the parts that machine review cannot accurately judge. Since machine review has already done a lot of preliminary work, the workload of manual review is reduced and work efficiency is greatly improved.

Specific review factors generally include two aspects, namely image review and text review. By reviewing the identity features such as logos, watermarks, QR codes, and barcodes in the image, you

can easily identify whether the video content uploaded by the user is original. By extracting frames from videos uploaded by users, the images used in the videos can be decomposed, making it easier to compare and determine whether the videos uploaded by users involve infringement. Text review is easier than image review, and it can also be more intuitive to determine whether the video uploaded by the user has the possibility of infringement.

At the same time, the China Online Audiovisual Program Service Association has also formulated the "Online Short Video Content Review Standard Rules", which provides detailed regulations on the specific content that needs to be paid attention to during the short video review process, listing 100 types of short video programs and their titles and names. , comments, barrage, emoticons, etc. It provides a reference for building an effective online short video content review mechanism, and plays a role in improving the quality of short videos, reducing short video infringements, and preventing the spread of content that damages legitimate rights.

As can be seen from the above, the existing review mechanism established by the short video platform has relatively mature regulations on the specific review content and review methods. On the basis of the existing review mechanism, improvements are made to meet the needs of the new "notification-permanent deletion" rules, which can meet the needs of the new rules and provide a mechanism basis for the construction of new rules[5-6].

3.3. Legislation in other countries

When the U.S. copyright law was revised, the U.S. Copyright Society first proposed the concept of "notice-permanent deletion". The EU added new filtering obligations to the Single Digital Market Copyright Directive adopted in 2019. That is to say, network service providers are required to filter content uploaded by network users and actively try to protect copyrights from being infringed by short video creations. For short videos that infringe copyright, technical measures should be taken to ensure that they will no longer be uploaded and disseminated. In the "Research Report on "Safe Harbor" Section 512" released in 2020, the U.S. Copyright Office proposed the idea of a "notice-block" rule. Specifically, it is similar to the newly established filtering obligations of the European Union. For network service providers who only follow the traditional "safe harbor" rules and fulfill the requirements of the "notice-and-delete" rules, but there is no guarantee that the same video will be blocked in the future, can they be exempted from liability? Put forward different views.

For China, can learn from the relevant legislation of the European Union and the United States to set the filtering obligations and prior review responsibilities of network service providers to adapt to current developments and provide a legal basis for the "notice-permanent deletion" rule.

4. Concrete construction of the "notification-permanent deletion" rule

4.1. Setting the threshold for rule application

The construction of the "notification-permanent deletion" rule must rely on the application of new technologies, and the normal operation of technologies such as artificial intelligence depends to a large extent on technical standards. The normal operation of the rules themselves depends largely on the applicable threshold. If the applicable threshold is set too low, it will likely lead to abuse of the rules. This situation is reflected in the application of the original "notice-delete" rule, because the "notify-delete" rule requires the network service provider to take necessary measures against the infringing works after receiving the notice from the right holder, otherwise the network. The service provider will also be liable for the infringement. Therefore, after receiving notice from the rights holder, many network service providers directly delete the video without considering the opinions of the users who uploaded the video. If the threshold applicable to the "Notification-Permanent Deletion" rule is set too low, it will also lead to the situation that occurs in the "Notification-Deletion" rule, and due to the consequences of "Permanent Deletion", it will cause more damage to network users. If the application threshold is set too high, the "notification-permanent deletion" rule will exist in name only and will not be able to play its true role.

For the specific setting of the applicable threshold, you can refer to the applicable threshold provisions of the "Notice-Takedown" rule stipulated in the "Digital Millennium Copyright Act" of the United States. The network service provider adopts "standard technical measures".

The first part of the application threshold, specifically, is to set the threshold for the objects to

which the rules apply. It is crucial to clarify who the new "notice-permanent deletion" rule applies to, as this will directly determine whether the "notice-permanent deletion" rule can be accepted by people. The application of this rule should be directed to network users and accounts that have taken and reasonably implemented measures against repeat infringers under appropriate circumstances. The consequences of "permanent deletion" are huge, and it can only be applied to network users who commit repeated infringements.

For the second part of the applicable threshold, standard technical measures need to meet the following three conditions: First, be developed based on broad consensus reached by copyright owners and network service providers through an open, fair, voluntary, multi-industry standards process. The purpose of setting up the "notification-permanent deletion" rule is to safeguard the rights of copyright holders, balance the responsibilities between rights holders and network service providers, and also involve provisions on the responsibilities and obligations of rights holders and network service providers. Therefore, the formulation of standard technical measures should be based on a consensus reached between the rights holders and network service providers in a fair, open, and voluntary manner. At the same time, this consensus should be in line with the standards of different related industries and can be adopted by relevant personnel.

Second, available to anyone on reasonable, non-discriminatory terms. The application of the "Notification-Permanent Deletion" rule should be applied uniformly and equally to all persons who meet the applicable conditions of the standard. It is not possible for a network service provider to independently choose to give priority to the copyright interests of certain people, such as rights holders with whom it has a business network or interest relationship, and deliberately delay the application of rights holders with whom it has no interest or even competitive relationship. Or for some Internet users, because they are unusual for Internet service providers and are also important content creators on the platform, which play an important role in attracting fans and enhancing user stickiness, a "white list" is set up for such users. ". This is an inevitable requirement of the principle of fairness.

Finally, there is no substantial cost added to the network service provider or substantial burden on its system or network. This is out of consideration for whether network service providers are willing to actively implement the "notice-permanent deletion" rule. The standard technical measures for implementing the new rules should be established on the basis of utilizing the review mechanism of existing network service providers as much as possible. On the one hand, it is conducive to saving resources and fully embodies the principle of efficiency; on the other hand, it reduces the burden on network service providers. The "notification-permanent deletion" rule itself sets new obligations for network service providers. Substantial costs or a substantial burden on its systems or networks also appear too harsh, ignoring the legitimate interests of network service providers.

4.2. Rights and obligations settings of video platforms

As the direct executor of the "notification-permanent deletion" rule, the video platform's rights and obligations should be the most important among the parties involved, and the setting of platform responsibilities is the key point.

First, the video platform needs to build a reasonable algorithm. In the era of artificial intelligence, algorithms are widely used, and the number of notifications is increasing exponentially; if there is a problem with the initial algorithm design, the resulting error results will also be massive, and the cost of error correction after the event will be huge, resulting in adverse legal consequences. It will also be very serious. ⁹ In the era of web 1.0, in the use of the "notice-delete" rule, there is an obvious situation that although the uploader of the deleted work has the right to "counter-notify" in theory, he can upload his own content on the video platform. After implementing technical measures for his work, he proposed his own claims to the video platform, thereby restoring the originally deleted short video on the platform. However, in reality, network users rarely or even do not exercise this right. This shows that ordinary Internet users will basically not seek further rights relief for the short videos they publish. Therefore, when trying to use the algorithm to implement the "notification-permanent deletion" rule, you must first build a reasonable review algorithm. At the same time, the subjective state of the video platform when building the algorithm should be fully considered for the responsibility for setting a reasonable algorithm that leads to serious legal consequences. This is because, under the current technical conditions, it is difficult for the video platform to build a perfect algorithm. Moreover, as an artificial product, algorithms are formed under the operation of programmers. It would be unreasonable and too harsh to require them to be foolproof. Therefore, if the video platform constructs the review algorithm not intentionally but due to negligence and reasonable circumstances have been considered,

the video platform should be exempted from liability.

Secondly, video platforms should publish the main review elements of the algorithm. Since the algorithm itself may involve technical information and business secrets, video platforms cannot be required to disclose their algorithms. However, the elements that the algorithm focuses on during the specific review process must be disclosed, so that the public can understand the intent of the review and ensure that the review standards are reasonable and necessary. At the same time, this is also conducive to fair competition among video platforms. If some video platforms choose to disclose their review factors, while some video platforms refuse to disclose their review factors. Because the former publishes audit factors, the public will have a better understanding of the operation of relevant platforms, and will be more inclined to supervise them by public opinion. For the latter, the public cannot conduct social supervision because they do not understand how it operates. That is to say, there will be such a paradox that the video platforms that have paid more will bear greater social pressure, and the video platforms that refuse to disclose are thus exempt from social supervision. This is a patently unfair situation.

Finally, the size of the video platform, profitability, and the benefits brought by the infringing short video over a period of time should be fully considered to set up the liability of the video platform. For smaller-scale video platforms, it is undoubtedly very difficult to require them to invest a lot of cost and energy to build a complete review algorithm mechanism on their own. Consider establishing different levels of structures similar to national standards, industry standards, and corporate standards. For small video platforms, departments or industry associations can provide standard review algorithms. For large video platforms with strong technical capabilities, they can be allowed to independently set more stringent review algorithms.

For video platforms that have fulfilled their necessary obligations, they should be recognized as having the right to claim immunity from liability.

4.3. Right holder's rights and obligations setting

As the owner of copyright, right holders should actively seek relief for their own rights, just as the French proverb "laws do not protect people who lie on their rights and sleep late", actively redressing their own rights is not only the right of right holders, but also should be the obligation of the right holder. To meet the above requirements, rights holders need to actively communicate with the video platform and reach an agreement. Build a library of works reviewed by the video platform, so that the video platform can review whether the short video has the possibility of infringement as comprehensively as possible when conducting the review. It should be noted that it is the joint responsibility of the rights holder and the video platform to actively establish a review library, which is the basic requirement for improving the efficiency and accuracy of the use of artificial intelligence and other technologies. The platform needs to undertake the obligation to actively seek authorization, that is, to do its best to reach a license agreement with the right holder, to obtain its authorization and to filter the copyright, that is, to do its best for works that the right holder has provided relevant necessary information in advance or issued sufficient substantive notices. Prevent it from appearing on the platform and prevent future uploads. 10 Right holders need to undertake the obligation to actively reach relevant agreements with the video platform to ensure that the video platform can normally use the works within the scope of its copyright for review work.

4.4. Setting of rights and obligations of network users

As the passive party in the "notification-permanent deletion" rule, the rights and obligations of network users should focus on the protection of rights. It can be mainly divided into two aspects, which are similar to the rights remedies for specific administrative acts and abstract administrative acts in administrative law. However, considering that this rule is in the civil field, the scope of application of private opinions and the rights of network users are different. First, Internet users can challenge a specific short video that has been "permanently deleted", that is, maintain the "counter-notification" right setting in the "notification-deletion" rules. The second is to question the algorithm used by the video platform. Considering that the specific algorithm content of the video platform should not be made public, Internet users need to question the algorithm of the video platform similar to the method of reviewing abstract administrative actions incidentally through specific administrative actions. Considering the actual operation, Internet users should be allowed to intentionally upload short videos that may involve infringements for testing purposes rather than for propagation purposes to test the

algorithms of the video platform. However, after the test results are obtained, if it is found that the short video involving infringement can pass the review, it should be promptly and proactively deleted. If you claim that you are only for testing purposes, but find that you can pass the review, the class will not be deleted within a reasonable time. Subjective testing purposes should not be identified, and liability for infringement should also be assumed.

5. Conclusions

The rapid development of image synthesis and editing, image processing, and network transmission technology has led to the emergence of a large number of user-generated content (UGC), creating the era of self-media. The development of new technologies such as big data, blockchain, and artificial intelligence has enabled network platform service providers to have the ability to filter content. Now, copyright content filtering technology is actually close to maturity, and is gradually being applied to identify and prevent network piracy. It has become a general trend to increase the ex ante and interim obligations of platforms in areas such as content supervision. The new rule of "Notification-Permanent Deletion" is set to meet the needs of reality and the level of technological development. In the setting of the new rules, fully considering the actual needs of video platforms, right holders, and network users, and setting up reasonable behavioral requirements and responsibility assumptions will be conducive to the normal operation of the new rules, balance the interests of all parties, and maintain the long-term stability of the short video industry development prospects.

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