

On Whether Illegal Deductive Works Can Be Protected by Copyright

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ABSTRACT. *Deductive works refer to new works produced by analyzing, adapting, translating, annotating, and collating existing research works, also called derivative works. The copyright of the deductive work belongs to the deducer. The deductive works are based on other works, on which the author's new ideas are added to recreate. If the interpreter has obtained the permission of the author of the deduced work before performing the deduction, the deductive work is of course protected by copyright; if the interpreter has not obtained the permission of the author of the deduced work before performing the deduction, whether the deductive work can be subject to the "Copyright Law" "The issue of protection is still very controversial.*

KEYWORDS: *Illegal deduction, Copyright, Legal deduction*

1. Introduction

In movie theaters, we often see words adapted from "XXX", which is a common form of expression in deductive works. To discuss illegal deductive works in this article, we must first clarify the concept of deductive works. Article 12 of the Copyright Law stipulates: "Works created by adapting, translating, annotating, or collating existing works, the copyright of which is enjoyed by the author of the adaptation, translation, annotation, or collation, but the exercise of copyright shall not infringe the original work Copyright." [1] Although our country does not clearly stipulate what is a deductive work, it can be learned from this law that a deductive work refers to the adaptation, translation, annotation, and arrangement of new works. It can also be called a derivative work. A comparative analysis of the provisions of the German "Copyright Law": "For the translation of certain works and adaptations, if it can reflect the personal development and creative talents of the adaptors, it will not harm the copyright of the adaptations; carry out independent research work to Get effective protection; do not have to adapt to unprotected musical works, and do not have to be protected as independent works". [2] It can be seen that the German definition of deductive works adopts an abstract and general form. Not only that, this definition also requires deductive works to "reflect the personal intellectual creation of the adaptor" from the perspective of content originality, while the definition of

deductive works in Chinese law is limited to four aspects: adaptation, translation, annotation, and collation. This kind of different behavior is obviously not comprehensive. Illegal deductive works, as the name suggests, means that the owner of the original work does not agree to others to adapt, translate, annotate, and organize his own work. The circumstances that have not been approved by the copyright owner here certainly do not include the “fair use” circumstances stipulated in Article 22 of my country’s Copyright Law. At the same time, we should pay attention to the relationship between the illegal deduction work and the original work. Illegal deductive works are not plagiarism. The content should be created by oneself and can reflect the personal thoughts and emotions of the creator. It should not only be a change in form, but should not have any change in substance. At the same time, the original work should not only be the material of the illegal interpretation work, but should be used as the base plate, otherwise the illegal interpretation work is a new work that has nothing to do with the original work.

2. Raising the Problem

my country’s law does not clearly stipulate whether illegal deductive works can be protected by copyright. In 2004, “Qian Zhongshu, People’s Literature Publishing House v. Xu Zhifen, Sichuan Literature and Art Publishing House copyright dispute case” was the final judgment [3]. In this case, Xu Zhifen organized “Besieged City” without the authorization of the author Qian Zhongshu and published it through Sichuan Literature and Art Publishers, infringing Qian Zhongshu’s right of interpretation and the exclusive publishing copyright of People’s Literature Publishing House. But in this case, the court finally ruled that Qian Zhongshu won the case. Excellent works often have great value that is used twice or even multiple times. How to characterize illegal deductive works is an important issue whether illegal deductive works are protected by copyright law. The principle of protection of creation is in the first place of the copyright law, and the principle of establishing a balance of interests is in the second place. The interpreter uses his professional knowledge to pay his own labor on the basis of the original work to produce a new work. It is not unreasonable to only be criticized blindly and to be protected by copyright law. However, due to its special nature of illegality, the law is the most important thing in balancing the interests of all parties between the original copyright owner, the illegal performer and the public.

3. Views of All Parties

There are different opinions in academic circles about whether illegal deductive works can be protected by copyright. It can be roughly divided into: protection theory, non-protection theory, and compromise theory.

1) Do not protect. Many domestic and foreign scholars agree with this view. The legal motto “No one shall profit from his own illegal activities” is not only a manifestation of the American law “Rigs v. Palmer” case, but also the legal basis of the theory of infringing works. The U.S. Constitution stipulates: “Promote the

progress of science and art by guaranteeing the exclusive rights of authors and inventors to their works and inventions for a certain period of time.” This reflects the legal protection of copyright. Authors enjoy copyright in their works. Violated. At the same time, paragraph (a) of the US Copyright Act stipulates: “The objects of copyright include editorial works and deductive works. However, the protection of works that use copyrighted original materials does not apply to any illegal use of such original materials in the work. There are materials.” This is a disapproval of illegal deductive works.

2) Protection theory. This view believes that illegal deduction works are also the result of the labor of illegal deduction and should also be protected by law. It is conducive to the creation and dissemination of excellent works, and realizes the legislative purpose of the Copyright Law. “There are specialties in the art industry.” Some authors are experts in the field of creation, but are not experts in filming, and creating and filming require different people to share. In today's society, no one cares about original works, and it is not uncommon for everybody to know examples of illegal deduction works. If only the interests of the rights holders of the original works are protected and the illegal deduction works are not protected, this means that the value of the illegal deduction works is fundamentally not recognized, and sometimes goes against the interests of the public. If the illegal derivative works are not protected, a third person will infringe on the rights of the second person.

3) The compromise said. This view believes that a balance should be struck between protecting the rights of the original copyright owner and the work of the illegal performer. While protecting the rights of the original copyright owner, we should also set limits on the use of illegal deductive works by illegal deducers. Or, use the unjust enrichment system in the civil law or the additional rules to balance the relationship between the two. In the famous *Stewart v. Abend* case[4] in the United States in 1990, the plaintiff in the case was Abend, the author of “Inevitable Murder,” and the defendant was Hitchcock, the director of the film “Rear Window.” Under authorization, making his novel into a movie violated the author's rights. However, the court did not use the permanent injunction system. On the contrary, the judge also introduced the concept of “public interest”. If “stop infringement”, the possibility of people coming into contact with these excellent films will be greatly reduced. The judge ordered the defendant to pay the plaintiff a certain amount of compensation, which not only better balances the interests of the original copyright owner and the illegal interpreter, but also takes the public interest into consideration, which is a more desirable approach.

4. Analysis of Various Viewpoints

1) Non-protection theory. This view is essentially biased towards the original copyright owner. Infringing works can be divided into two types based on the results. One is that the interpreter adapts, translates, annotates, and organizes works different from the original work without the permission of the copyright owner; the other is that the interpreter has not the copyright owner. Adapted, translated, annotated, and

sorted out with permission to produce works that are different in form but substantially the same as the original works. The former infringement is an infringement on the author's market share, but the works produced by it are conducive to social progress and development. The owner of the original copyright does not grant the right of deduction to others, and the deductive works based on deductive acts are circulated in the market and may even be more popular than the works. Then the illegal deductive works will account for more market share than the original works. , Both from the perspective of reputation and economic benefits, are damage to the original copyright owner. The latter's infringement is essentially a plagiarism. If this kind of work is mistaken as an illegal deductive work, the plagiarist has not processed and recreated himself, but copied the intellectual achievements of others. It is not only an infringement of the author's rights, but may even disrupt market order. From this, we can see that the theory of infringing works has a "one size fits all" suspicion. Deductive works should have originality, and when an illegal deductive work is determined to be infringing, the illegal deductive work should also be required to be original. Even "minor changes" should be recognized [5].

2)Protection theory. Contrary to the non-protection theory, this view focuses on the protection of illegal actors. However, the mere protection of the interests of the illegal interpreters and the ignorance of the interests of the original copyright owners may chill the first creator, and make the legitimate prior interpreters feel dumb and dissatisfied with eating yellow lotus. In 2013, when Jin Yong granted the right to adapt, the plaintiff Perfect Company used "The Legend of the Condor Heroes", "The Legend of the Condor Heroes", "The Legend of the Dragon Slayer", and "Swordsman" as the blueprint to develop game software[6] . In 2014, Perfect Company found that Shanghai Wildfire Company, Fujian Borui Company and other companies, without the permission of Mr. Jin Yong, also used "The Legend of the Condor Heroes", "The Legend of the Condor Heroes", "The Legend of the Dragon and the Dragon" and "Laughs". Ao Jianghu developed the novel of "Six Martial Arts" as a blueprint, and conducted a public beta. Companies such as Shanghai Wildfire Company and Fujian Borui Company, as illegal interpreters, have paid the fruits of their labor, but actually caused unfair competition and caused damage to the original copyright holders and legal interpreters. If we pay attention to protecting the interests of illegal actors, how should we treat legal actors in this case? Perfect Company respects Mr. Jin Yong's copyright and seeks the legal act of Mr. Jin Yong granting the right of adaptation. Illegal acts and legal acts have the same starting point, but illegal acts cost less, which is morally and materially harmful to the owner of the original copyright and the legal interpreter.

3) Eclectic theory. The author believes that this is a more reasonable way to deal with infringement cases of illegal deductive works. But how to implement it will be determined according to specific cases. The author believes that in today's society, we should focus on protecting the interests of the original copyright holders. This is not only because the illegal interpreter has flaws in obtaining rights, but also because it is a value choice in protecting the motivation of the original creation and

encouraging the dissemination of new works. If the focus is on encouraging the dissemination of new works, then the prosperous scene in the field of dissemination of new works will be fleeting, because the original creative power may be exhausted due to the lack of protection of the law. However, the illegal performers also put in their hard work, and protecting their intellectual achievements is also the purpose of the Copyright Law. At the same time, the interests of the public should also be considered. If it is determined that stopping the infringement of the illegal deducer will harm the public interests of the society or will cost a huge cost, you can consider “the infringement will not stop” and require the illegal deducer to take the right holder of the original work. Compensation. Or, depending on the specific circumstances of the case, different degrees of protection are given to illegal deductive works, legal deductive works and works.

5. Conclusion

After the above analysis, we can find that the law should focus on protecting the interests of the original copyright owner is the best choice today. In addition, we should pay attention to a literary form that is often used in life-”parody”. Parody, also known as parody, refers to the use of sarcasm and other means to express one's creative purpose in one's own works. This creative technique will definitely draw on many contents of the original work. And this type of work is objectively not easy to be approved by the author during the creation process. Because no author wants his work to be mocked. If we insist that the creation of this type of work must be based on the authorization of the original copyright owner, it is tantamount to sentence of death for this literary form. Therefore, judging whether this literary form infringes the rights of the original author should not be based on his or her consent. The parody of the literary masterpiece “Gone with the Wind” in the work “Drifting” and the parody of the “Wuji” directed by Chen Kaige in “Ban Tou” are typical examples[7]. The advent of the 5G era makes it convenient and rapid for people to obtain information. Whether it is patent or copyright, there will be more and more examples of new works based on the original work without the consent of the original copyright owner. It is also impossible for the copyright owner to authorize the deducers one by one. Therefore, the author believes that in addition to “parody” works, other deductive works that are not authorized by the original copyright owner can be presumed to be illegal from the law, and only after the original copyright owner's ratification can they have a legal status. Illegal derivative works shall be compensated for the benefits obtained before the original copyright owner ratifies them. If this illegal derivative work involves “public interest” and the original copyright owner does not agree to authorize it, then the law can learn from the US “non-stop infringement” approach and order the original illegal derivative work to grant the original copyright based on the benefits obtained Corresponding compensation.

References

- [1] Zhang Enmin translated: "German Copyright Law and Access Right Law" (revised on September 10, 2003). M·Lei Bingde "Copyright Law", translated by Zhang Enmin, Law Press, 2005 pp.712.
- [2] Zhou Yanmin, Song Huixian (2006). Parody and copyright protection--Talking from "Wuji" and "The Bloody Case of a Steamed Bun"[J]. "Publishing and Distribution Research", no.6, pp.60.