

Research on Copyright Infringement of Wechat Platform

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ABSTRACT. *With the emergence of WeChat, the works of WeChat were born. Although the length of WeChat works is relatively short, if it can reflect the original expression of works and can be spread on WeChat platform, it can be included in the protection category of works of copyright law, and others who violate the copyright of authors of WeChat works should bear the tort liability. However, WeChat works are spread among relatively closed people, which makes it more difficult to identify the infringement of WeChat works and increases the cost of protecting the rights of WeChat works. The subjects involved in WeChat works are diverse, including WeChat users, WeChat public moderators and WeChat platforms. The diversity of subjects makes the infringement identification of WeChat works more complicated. WeChat works, derived from the development of the Internet, have difficulties in the identification of infringement of WeChat works. Moreover, WeChat works not only need to be identified through the elements of infringement, but also need to see whether the behavior of the actor can comply with the disclaimer. Therefore, this paper further discusses the application of legal license and reasonable use system in WeChat works, so as to clarify the identification of WeChat infringement.*

KEYWORDS: *Wechat works; Infringement subject; Infringement act*

1. Introduction

For WeChat public platform of works, southwest university of political science and law in intellectual property laws, intellectual property law of Peking University post-doctoral Yang Yanchao in the copyright issues related to WeChat platform research, the article points out that, on the meaning of the copyright law interpretation WeChat public platform, still should be the two necessary conditions, namely the originality and replication. In terms of the types of intellectual property infringement in WeChat public platform, ma guoguo, director of the intellectual property research center of xi 'an jiaotong university, thinks that the improper behaviors of ordinary users, public accounts or public platforms may infringe the personal rights and property rights of copyright owners. In terms of whether the forwarding of WeChat official account constitutes reasonable use, professor feng xiaoqing, vice President of China intellectual property law research association and professor of China university of political science and law, believes that it conforms to the will of copyright owners and is conducive to timely and effective

dissemination of information on WeChat public platform, and should be considered as reasonable use.

2. Definition of Wechat Works

2.1 What is Wechat Work?

WeChat works are short in length and contain pictures, sounds, words, etc., which are different from other works in the Copyright Law. According to the provisions of the Copyright Law, works are original in the fields of literature, art, science, etc. and can be reproduced in the form of certain carriers. Therefore, WeChat works have two elements: originality and reproduction. First, originality. The difference between WeChat works and other works lies in that WeChat works are short words, sounds, pictures, etc. But even a short length cannot deny the originality of WeChat works. The so-called originality refers to the creative results that are different from other works. As long as the WeChat works published by the authors reflect the creative intellectual achievements, then WeChat works should be protected by copyright law. Second, replicability. The work requires a creative intellectual expression that exists in a certain carrier. If an expression cannot be transmitted in the form of a carrier, it cannot be called a work. And WeChat works can take WeChat platform as the carrier, through the reproduction of WeChat users and get spread. In other words, WeChat works are reproducible.

2.2 Copyright Infringement Caused by Wechat Works

As long as the author's expression is original, reproducible and other core elements, the expression can be called a work, protected by copyright law. Although the WeChat works are short in length, if they can reflect the original expression of the works and can be spread on the WeChat platform, they can be included in the protection of the copyright law, and others who infringe the copyright of the authors of the WeChat works should bear the tort liability. Therefore, it is worthwhile to think about whether a large number of WeChat works reproduced without the author's permission can be regulated by copyright law and bear the tort liability .

3. Infringement Recognition of Wechat Works

The WeChat works are based on the WeChat platform and spread on the WeChat platform. Therefore, the infringement identification of WeChat works involves three parties: WeChat public platform, WeChat public version moderator and WeChat users. WeChat public platform is to provide online services. The moderator of WeChat public account releases WeChat works through WeChat public account to attract users' attention, and will regularly push WeChat works to users, while WeChat credit shares and republishes WeChat works in the circle of friends.

Therefore, the infringement identification of WeChat works must be initiated from the WeChat public platform, the WeChat public moderator and the WeChat users.

3.1 From the Perspective of the Wechat Common Platform

Since WeChat public platform mainly provides network services and is not directly associated with WeChat works, it generally does not constitute direct infringement of WeChat works. However, WeChat public platform has regulatory obligations, and the “notice deletion rule” in copyright law applies to WeChat public platform. When copyright owners inform WeChat public platform that their WeChat works are infringed, WeChat public platform has the obligation to delete the infringing content. If WeChat public platform still fails to perform the deletion obligation after being informed of others' infringement, WeChat public platform and the infringer shall assume joint liability and constitute a joint infringement.

3.2 From the Wechat Public Version Moderator

Since the WeChat public account is generally profitable, when the WeChat public account owner reprints other WeChat works, the author or source of the work of others without the permission of others, the WeChat public account holder constitutes a WeChat work for others. Violation. If the WeChat public version moderator, without the permission of others, but indicating the source of the author of other WeChat works, etc., at this time can be identified as a violation of the reprint of the WeChat works.

3.3 From Wechat Users

WeChat works mainly rely on WeChat users in the circle of friends to share and reprint. Generally speaking, WeChat users' republication of WeChat works does not need the permission of the author of WeChat works, which can be regarded as a reasonable use of WeChat works. It is applicable to “use others' published works for personal study, research or appreciation” stipulated in article 22 of copyright law of China. Therefore, if WeChat users indicate the author and source of WeChat works in the process of reprinting WeChat works, then it does not constitute infringement of WeChat works at this time, except where the author indicates that reprinting is prohibited. However, if WeChat users do not indicate the author and source of WeChat works, it is easy to cause confusion to others. At this time, WeChat users shall bear the tort liability for WeChat works. However, if the user republishes the work for improper purposes, or for profit purposes, even if the author and source are indicated when reprinting WeChat works, it still cannot be considered as fair use. As long as without the permission of the author of WeChat works, that is to say, the infringement of WeChat works shall be regulated by copyright law.

4. Discussions on the Causes of Exemption

The above has discussed the identification of infringement of WeChat works, and the exemption of liability in the identification of infringement of WeChat works is also extremely important. For example, if WeChat users redistribute works in the circle of friends and indicate the source and source of WeChat works, it can be deemed that WeChat users use WeChat works reasonably, excluding the infringement liability of WeChat users. But WeChat official moderator without the permission of the author reprint WeChat works cannot be considered as fair use. Therefore, WeChat works infringement identification, not only through the composition of the elements of infringement, also need to see whether the behavior of the actor can meet the exemption grounds; If the exemption of liability is met, the tort liability of the actor will be exempted. Therefore, the exemption of liability is also one of the keys to identify infringement. Therefore, in the identification of infringement of WeChat works, it is necessary to have a deep understanding of the exemption.

4.1 Legal License

A statutory license is a disclaimer under the Copyright Law. A statutory license means that in special circumstances, without the permission of the copyright owner, the work may be used on the premise that the published work indicates the author, source, etc. and pays reasonable remuneration, but the use of the pair may not be used. Infringe on other rights of the copyright owner. The statutory license provisions in China's "Copyright Law" Article 33, especially Article 33, paragraph 2, except that the copyright owner expressly refuses to reprint, can apply the statutory license, but the scope of application of the provisions is limited to newspapers and magazines. The WeChat works are spread on the WeChat platform, and the WeChat platform is not a newspaper or magazine in the traditional sense. In response to the application of the statutory licenses stipulated in the second paragraph to the WeChat works, the "Notice on Regulating the Network Reprinting of the Copyright Order" promulgated on April 27, 2015, stipulates that the newspapers and magazines and the Internet media, as well as the Internet media, have been reprinted. For the work, the provisions of Article 33, paragraph 2, of the Copyright Law are not applicable. That is to say, when the newspapers and magazines and the Internet media and the Internet media have to reproduce the published works, they must first pass the permission of the copyright owner of the works. The work may not be reproduced without permission or if the copyright owner does not agree to reprint it. Therefore, for WeChat works, the WeChat public version mainly needs to meet several conditions when reprinting other people's works: First, you need to obtain the permission of the WeChat works copyright owner; secondly, you need to pay the corresponding compensation; finally, you need to reprint it. The author, source, etc. are indicated on the WeChat work. If the WeChat public version owner reprints the work without the permission of the copyright holder of the WeChat works, the statutory permission in the copyright law cannot be used, but constitutes an infringement of the author's copyright.

4.2 Fair Use

Fair use is one of the exemptions stipulated in copyright law. Fair use refers to the use of a published work in a certain way without the permission of the copyright owner or payment of remuneration. Fair use is stipulated in article 22 of China's copyright law, in which article 22, paragraph 1, stipulates that "to use a published work of others for the purpose of individual study, research or appreciation". Therefore, when determining the infringement of WeChat works, the reasonable use of WeChat works should be considered. Once the behavior of the actor can be considered as fair use, the infringement of copyright of WeChat works is excluded. The criteria to judge the reasonable use of the actor mainly include: first, to judge the source of the work. For WeChat users or WeChat official account moderator original works, if there is no mark to prohibit the use, the WeChat works can be reproduced and reasonable use; If the WeChat works marked prohibited reprinting, WeChat users and WeChat official number moderator shall not be reproduced. Secondly, judge the purpose of use. For WeChat users, the reproduction of WeChat works is mainly for personal learning and appreciation, while for WeChat public accounts, it is generally profitable. Finally, determine the forwarding behavior. The premise of fair use is that the author and source of WeChat works must be indicated. If there is no indication of the source in the forwarding process, it will violate WeChat works. Of course, the use of fair use needs to maintain the integrity of WeChat works. Generally speaking, WeChat users share WeChat works in the circle of friends, which is to directly share the original works, protect the integrity of the works, and meet the standards of scientific use. However, for WeChat official account, WeChat official account may delete some contents when using WeChat works, which violates the right of protection of integrity of WeChat works, and does not belong to the scope of reasonable use. At this time after the copyright owner's permission, if not the copyright owner's permission to constitute a copyright infringement. Therefore, the application of the fair use system in WeChat works can ensure the spread of WeChat works, especially the users can share WeChat works in friends circle through the fair use system, so that WeChat works can be reproduced. It does not infringe the rights of copyright owners of WeChat works, but also enables WeChat works to be spread and developed. However, when the moderator of WeChat official account USES the fair use system, due to the profitable nature of WeChat official account, it is necessary to consider the purpose of using WeChat official account to WeChat works and whether to destroy the integrity right of WeChat works, and apply the fair use system to the moderator of WeChat official account carefully.

5. Conclusion

WeChat works are mainly reproduced and transmitted on WeChat platform, which is relatively closed. We need to start from the perspective of WeChat public platform, WeChat public account moderator, and WeChat users to analyze the infringement behaviors of different subjects. Of course, in the infringement of WeChat works, it is necessary not only to identify the constituent elements of the

infringement, but also to see whether the behavior of the perpetrator can meet the excuses, mainly legal licenses and reasonable use. Article 33, paragraph 2, of the Copyright Law provides that a statutory license may be applied except that the copyright owner expressly refrains from reprinting, but the scope of application of the provision is limited to newspapers and magazines. The WeChat works are spread on the WeChat platform, and the WeChat platform is not a newspaper or magazine in the traditional sense. The mutual reprinting of WeChat works shall not be subject to statutory permission. The criteria for judging the reasonable use of the actor include: judging the source of the work, judging the purpose of use and judging the forwarding behavior. The application of fair use system in WeChat works can ensure the spread of WeChat works, especially the users can share WeChat works in friends circle through the fair use system, so that WeChat works can be reproduced. Because WeChat public account has the nature of profit, the moderators of WeChat public account carefully apply the reasonable use system. Based on this, we fully understand the infringement identification of WeChat works and realize the copyright protection of WeChat works.

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