

Study on the Construction of Perfecting the Collective Administration System of Network Copyright

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Received: July 25, 2011

Accepted: August 5, 2011

doi:10.5539/jpl.v4n2p139

Abstract

The collective administration of copyright is the system designed to protect and administrate the copyright. In nature, the collective administration of copyright is a kind of civil rights administration system, and a kind of concrete form of trust. With the development of the networking society, it is urgent to strengthen and perfect the collective administration system in network environment.

Keywords: Collective administration of copyright, Network environment, Benefit balance

With the popularization of network, once the works are published, the copyright owners are hard to control the circulation of their works, and realize their economic rights by taking the charge for use. The practice of domestic and foreign copyright laws has proved that it is very effective to manage those rights that the copyright owners cannot or are hard to control for the collective administration organization of copyright. By authorizing the users of works and taking the use charge of works collectively, the collective administration organization would return the surplus charges according to certain proportion after deducting necessary administration charges. By this way, not only copyright owners' economic benefits can be guaranteed, but also the users of works would enjoy convenient and legal using approaches and enhance their management efficiency.

1. General introduction of the collective administration system of copyright of China

The collective administration system of copyright is a kind of special system in the intellectual property protection system, and the collective administration organization of copyright in foreign countries has been born for above 200 years, and the premier collective administration organization of copyright came from France in the 18th Century.

1.1 Legal frame of the collective administration system of copyright

The legislation of the collective administration of copyright in China grew out of nothing. In 1990, when the Copyright Law of China was issued, there were not any rules about the collective administration of copyright because lacking of the practice and experience of the collective administration organization of copyright. In 1991, the relative regulations about the collective administration first occurred in the Implementing Regulations of the Copyright Law of the People's Republic of China, and the 54th article in this file first regulated that the copyright owners could perform their copyrights by the mode of collective administration. In 2001, in the modified Copyright Law of China, the collective administration of copyright was regulated principally, and the lawful state and nature of the collective administration organization was first confirmed, and the collective administration organization could perform the rights and answer the lawsuits in its own name. The Copyright Collective Management Organization Act implemented in 2005 regulated the concrete works, the supervision function, and the administration function of collective administration organization.

The Regulations on the Protection of the Right of Communication through Information Network performed in 2006 regulated the responsibilities of the copyright administration organization and the network service suppliers in detail, but it didn't touch upon the concrete operation of the collective administration of copyright in the information network environment. The second modification of Copyright Law of China in 2010 had not adjusted the content about the collective administration of copyright, and with the popularization of network torts, the collective administration of copyright has been a key problem in the lawful protection of copyright inevitably.

1.2 Development and actuality of the collective administration organization of copyright of China

The collective administration of copyright in China mainly relates to two domains. For the collective administration of music composition copyright, MCSC is the first collective administration organization of copyright, and it is the nonprofit organization to professionally maintain composers, words writers, and other music copyright owners'

lawful rights and benefits. According to the Implementing Regulations of the Copyright Law of the People's Republic of China, the State Copyright Bureau of China established the Copyright Use Remuneration Collecting and Delivering Center, which is the institution with the distribution function of remuneration of the collective administration organization of copyright.

At present, to adapt the change of copyright in network environment and solve the new problems in the collective administration of copyright, the collective administration organization of copyright is developing to the electronic and networking direction. The electric administration of work copyright is a kind of new administration measure for collective administration organization, which is the new administration mode based on the modern network technology.

2. Jurisprudential analysis to implement the collective administration system of copyright in network environment

The collective administration organization of copyright accepts copyright owners' authority and professional specialize in the administration of copyright, with large investment and professional personal, cooperating with other institutions and organizations, which are not be accomplished by personal administration. As viewed from the present networking environment, it is very important to strengthen the collective administration of copyright.

2.1 New spread demand of copyright in network environment

The network technology supports the infinite spread of works, and the spread and use of works broken the regional limitation of copyright, so the copyright works spread all over the world and are used by the persons in the whole world. When the spread speed is strengthened and the spread range is expanded, the authors are more and more difficult to control the copyright. At the same time, the network technology also simplifies the existence form of works, and once the works enter into the network domain, any one is easy to obtain them at any time and at anywhere more easily. The highly developed copy technology makes the authenticity and integrity of works become weak, so it needs to construct the collective administration system of copyright in the network environment.

2.2 Collective administration of copyright could more effectively realize the balance of copyright

In the network environment, the basic principle to protect the author and encourage the creation in the copyright law has not been changed, and to seek the balance of rights and interests is still the legislation aim and target of the copyright law. In fact, the collective administration of copyright still is the bridge between owners and users, and in the information networking, it can more effectively adapt the requirements and characteristics of the network technology, and provide convenience for the communication between users and owners to realize the balance of copyright.

2.2.1 Functions of collective administration of network copyright

Through the communication function of the collective administration of copyright, the collective administration organization could not only use the advantages from professional institutions and technologies, supervise and follow the use of works, but also represent the authors to develop and utilize the work market, and realize the author's rights widely and comprehensively. At the same time, it should provide more comprehensive information about authors and their works for users to more conveniently acquire their needed works (Duan, 2006).

2.2.2 Balance the public and the author's benefits

The rationality to implement the collective administration system of copyright in the network environment is to keep the balance between the intellectual property owners' benefit and the public's benefit in the dynamic process including the production and circulation of intellectual works (Li, 2003). In the network environment, the collective administration platform of copyright could centralize many works, and establish an information market between authors and the public, and users can acquire their needed works in the market. In addition, the acquirement comes from lawful approach, which could not guarantee the authors to acquire their economic benefits through the spread of works, but help the public to contact excellent works, and finally promote the public's spiritual and cultural quality.

3. Challenges and opportunities of the collective administration organization of copyright in network environment

With the development of technology and the advance of the society, the intellectual property should be further protected to encourage more intellectual creations, and to guarantee the copyright owners' rights and benefits in new environment needs properly expand the content and range of the right, which is one of important cause of the expansion of intellectual property (Feng, 2006). In the network environment, the copyright works could be quickly and widely spread in the world by the digital mode, and the content of the copyright which was the private exclusive

right has been changed largely, and the traditional collective administration mode of copyright has not provide the protection better.

3.1 Elusive characteristic of the torts of network copyright

The network copyright means the work copyright and the work neighboring right owned by the lawful owners of literature works, art works, and scientific works who upload their works to Internet, and allow others to use the works. Because of the occurrence of network copyright, the range of the copyright administrated by the collective administration organization of copyright would be expanded.

3.1.1 Diverse tort modes

In the network environment, the torts based on Internet are diverse, for example, some users arbitrarily load the copyright owners' works and seek profits without the copyright owners' agreement, and some users arbitrarily upload copyright owners' works to the Internet without the owners' permission, and some users arbitrarily reprint and use others' network works. Except for few tort cases which have been known by the public, there are a mass of tort cases which have not been known by the public. In this situation, it is more difficult to effectively administrate the network copyright for the collective administration organization of copyright.

3.1.2 Complex copyright owners' copy modes

The meaning of copy is to fix a work or one part of one work or many copies on any material carriers, and it copies one 2D works as one or many 3D copies, or copy one 3D works as one or may 2D copies, or input one work or one part of the work into the computer system (Delia Lypzic, 2000). Traditional copy right means the right to utilize the original work or changed form of the original work by fixing the work on any carriers, or using any measures to obtain the whole works or any part of the work or many copies of the work.

The popularization of Internet make a mass of digital material could be copied with simple mode, high speed, high quality, and low cost, and interviewed and loaded by users in the whole world. The copyright becomes more and more difficult to be controlled by the owners, so the laws should further protect the work copyright, and properly expand the range of copyright. But the spread of information in network is the process full of copies, and many copies are normal and inevitable, and if all these copies must been allowed by the owners, the delivering speed and quality of network will be harmed seriously, and the information circulation will be limited seriously. Therefore, when confirming the range of copyright in the network environment, the right in the network environment must be limited to realize the balance of rights and interests concerned by the Copyright Law.

3.2 Limited legal using approaches of works

In the network environment, the users' using mode are diverse, for example, they use the work to create the multimedia work, or they use the work to establish various websites, or they use the work to establish the database of certain one type of work. These using modes often come down to a mass of work, diverse work types, and many copyright owners, and it is difficult to acquire the permission for the work users. But if the users have not acquired the copyright owners' authority and marked out the author and the source in advance, they will be easy to invade the owners' right. It is still a puzzle for the traditional and single work copyright collective administration organization to satisfy the new using demand for users, and provide a simple and quick authority procedure in the network environment.

4. Advices to perfect the organization and construction of the collective administration of copyright in network environment

The collective administration system of copyright is the optical approach to reduce the cost of social trade, and especially in the day that the network spread technology is developed increasingly, it is very important to establish and perfect the collective administration system of copyright, and first, the scientific collective administration organization of copyright should be established. However, in the network environment, because the practice studies and the theoretical guidance are deficient, the collective administration organization of copyright in China has not been constructed perfectly.

4.1 Perfecting the law construction of the collective administration of copyright in network environment

At present, the collective administration system of copyright of China is still in the initial stage, though the modified Copyright Law of China and the issued Copyright Collective Management Organization Act had regulated the collective administration of copyright in detail. Comparing with the practice of the collective administration copyright, the gap is still obvious, with many deficiencies and problems. In the future legislation works, the laws should establish more feasible and concrete operation regulations about the collective administration organization of copyright, and especially, it is a key problem about how to take and distribute the use charge. The copyright use

charge should be administrated by a comprehensive collective administration organization, and the use charge rate of works should be classified according to the right sorts, and authorized by the state administration department.

4.2 Establishing the electric serve platform of collective administration of copyright

The purpose of the electronization of the collective administration work of copyright is to protect the copyright owners' rights, and provide simple and quick authorization service for users, and to seek the balance of rights and interests is the legislation aim and target of the Copyright Law. Therefore, the collective administration organization of copyright should combine foreign advanced experiences and establish the electric network of collective administration copyright according to the actuality of the collective administration organization of copyright in China.

The copyright owners' works are the basic resource of the collective administration of copyright, and in the establishment process of electric platform, the copyright owners should successfully use the platform to register the works, and the users of works should obtain more convenient and quicker approach to get the permission of use. If users' objective demands are ignored, the efficiency of the electric administration mode will be reduced to large extent.

4.2.1 Strengthening the technical measures to protect copyright owners' lawful rights and interests

Technical measures mean the equipment, products, and methods adopted by the copyright owners or relative owners actively to effectively control the entrance of the works protected by the copyright law, and effectively protect the rights of work, and prevent invading other lawful rights and interests. The regulations in the Copyright Law of China about the technical measure right is principled, and without the copyright owners and relative owners' permission, users avoid or destroy owners' technical measures to protect the copyright or other relative rights for their works, which belongs to the tort. In fact, the copyright owners have the right to adapt relative technical measures to protect their works.

4.2.2 Encrypting the right administration information to prevent the network torts

The administration information of copyright is the information displayed about the copyright and the copyright owners' information when spreading to the public, appended on the copies to protect and manage the copyright owners' works (Li, 2008). The administration information is embedded in the electric files or appended on the copies of work by the electric mode, and displayed when spreading to the public. As same as the technical measures, when the owners authorize the collective organization to perform relative rights, they should also authorize the organization to administrate the administration information. The collective administration organization has the obligation to provide relative right information about the part for potential users. Of course, when the collective administration organization administrates the administration information, it should provide the convenience for the copyright owners to acquire the effective administration information of right in the range of personal administration.

4.3 Strengthening the cooperation with the international collective administration organization of copyright

The collective administration system of copyright works in China started late, lacking in base and experience, and the established collective administration organization of copyright is only limited in the music works and phonotype and videotape works, i.e. the Music Copyright Society of China and CAVCA. There are few necessary practice studies and theoretical guidance about the establishment of the collective administration system of copyright. But the collective administration system in developed countries such as EU and US has about 200 years' experiences, and the construction of organization institution has been perfected, and these countries have occupied the advantages in the economy and technology, and stood on the frontier of the construction of the copyright protection system (Li, 2005). China should strengthen the cooperation with foreign collective administration organization of copyright, use foreign advanced experiences for reference, and perfect the construction of the collective administration organization of copyright in the network environment.

4.4 Perfecting the supervision mechanism of the collective administration organization of copyright

To standardize the spread of works in the network and users' use of works is the principle function for the collective administration organization of copyright, and to establish a set of reasonable and ordered operation program is the guarantee to work normally for the collective administration organization. In the network environment, the torts of copyright become inconspicuous, and the collective administration organization of copyright and single copyright owners are hard to discover the torts, so it is very necessary to establish a kind of mechanism of network supervision, which could enhance the effective protection of copyright for the collective administration organization in virtue of the public's supervision.

References

Delia Lypzic. (2000). *Copyright and Neighboring Rights*. Beijing: China Translation and Publishing Corporation.

- Duan, Wei. (2006). *Legal Protection of Copyright in Network Times (First Edition)*. Wuhan: Hubei Educational Press. Oct of 2006.
- Feng, Xiaoqing. (2006). *Benefit Balance Theory of Intellectual Property Law (First Edition)*. Beijing: China University of Political Science and Law Press. Aug of 2006.
- Li, Guangyu. (2008). System Construction of the Copyright Protection in Network Environment. *Journal of Jiangxi Radio & TV University*. No.3.
- Li, Zhixun. (2005). The Function of Collective Administration Copyright in Internet. *Journal of Zhengzhou Institute of Aeronautical Industry Management*. No.3.
- Li, Zhiyan. (2009). Analysis of the Collective Administration System of Copyright. *Public Administration and Law*. No.7.