

ISSUES ON INTERNET COPYRIGHT INFRINGEMENT IN CHINA

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Introduction

- 1. The Internet is the masterpiece of human beings.
- 2. The Internet copyright infringement has become the hot topic for the Chinese legal community.
- 3. The Internet brings us not only huge convenience but also many troubles.

Today's Topics

- Jurisdiction over the Internet copyright infringement case
- Network piracy in China
- Digital library and library

Laws and Regulations

➤ The laws and regulations concerning the Internet Copyright include without limitation

□ 1. Copyright Law

- On November 7, 1990, Copyright Law was enacted
- On October 27, 2001, first amendment

- ❑2.Regulations on Implementation of the Copyright Law
- ❑3.Regulations on Protection for the Right to Network Dissemination of Information
- ❑4.Interpretations of the Supreme Court on Several Issues concerning the Application of Law in the Trial of Cases in relation to Copyright Disputes over Computer Network
- ❑5.Regulations on Protection for Computer Software
- ❑6.Measures for Security Protection Administration of the International Networking of Computer Information Network
- ❑7.Provisions on the Implementation of the International Copyright Treaties
- ❑8.Regulations on the Collective Management of Copyright

Chinese Court Structure



一、 Jurisdiction over the Internet Copyright Infringement Case

➤ 1. It is difficult to confirm the jurisdiction. This is because

□ According to the Civil Procedure Law, the court at the place of tort or the domicile of the defendant has the jurisdiction over the tort case.

□ Everybody can use a false name to access any website at any place.

□ Who's infringer? Where infringement happened?

➤ 2. Interpretation of the Supreme Court

❑ If we can't find the domicile of defendant, and

❑ If we can't find the place of infringement

❑ The place ,where a plaintiff finds the computer terminal containing the infringing content, is equal to the place of infringement.

➤ 3. Problems arising out of the interpretation

❑ If we don't know: who is infringer, whom can we accuse?

❑ If we require ISP to assume the responsibility, it is unfair.

❑ How to resolve the problem for the international jurisdiction and application of laws.

➤ 4. We should take other measures

Take the technology measures to ensure that we can catch the infringer and find the place of infringement.

In some cases, we can require the network user to use true name and identification.

Certainly the above measures will be harmful to the freedom.

二、 Network Piracy

➤ 1. Why is the network piracy popular on the Internet?

The quality of pirated work is nearly as good as the original's.

Cost of making a piracy is low.

Cost of protection for the copyright is expensive.

➤ 2. Measures to the prevention of network piracy

☐ Collective copyright administration organization

- Music Copyright Society of China
- Literary Work Copyright Association of China
- China Audio-video Copyright Association
- Images Copyright Society of China

☐ Harsh fine

☐ Reduce the fees for the use of original work

☐ Technology measures

➤ 3. ISP should be liable for the pirated work on its website, or not?

In 2009, Sohu, the largest portal website in China, filed the claimant against Youku, the leading video-sharing website of China, with the People's Court of Beijing Haidian District.

❑ The plaintiff's claim: Youku should be liable for the pirated work.

❑ The defendant's defense: The defendant has no liability based on the principle of safe harbor

❑ **Judgement?** The answer will not be known until the trial of this case is concluded.

三、 Digital Library and Library

➤ 1. Mr. Zheng and his six colleagues V. Beijing Shusheng Digital Library Co., Ltd

In 2004, Mr. Zhengchengsi and his six colleagues, who are the top class of law experts in intellectual property in China, brought a lawsuit against the Beijing Shusheng Digital Library Co., Ltd with Beijing Haidian District Court.

□ The plaintiffs' claim: (1) the cost of obtaining authorization is not the reasonable defense (2) the defendant is a profitable company, there is no fair use. the defendant violates the laws.

□ The defendant's defense: (1) the costs of obtaining of the authorization one to one are too expensive. (2) the defendant does not violate the laws because of fair use.

➤ 2. Decision made by judge

□ The courts of first instance and of second instance made the same decision:

- The copyright of Plaintiffs is protected by law on the Internet.

- The use of the defendant for the work does not constitute the fair use.

- The defendant must stop infringing the copyright of Plaintiffs.

□ This case became the leading case in IP law field in China.

➤3. My experience and the establishment of principles by this case

I was honored to participate in the hearing of this case as attorney for Plaintiffs.

The digital library is not identical with the real library.

Draw a line between the digital profitable company and the real library.

In any case, no illegal use of work shall be permitted, including Internet.

➤ 4. Arguments relating to this case

❑ Free of charge is different from non-profit.

❑ On the Internet, there is no boundary between the owner of the digital book information database and the book publisher.

For instance, if a company puts all of the books in the world into its digital information database, it will be the largest book publisher in the world. If it fails to comply with the laws, it will be the biggest infringer across the world.

❑ The traditional means of obtaining authorization may be redesigned to adapt to the massive authorization.

Conclusion

- The Internet copyright infringement is distinctly different from the traditional tort in many respects.
- The differences do not mean that the traditional laws, regulations and theories do not completely apply to the Internet.
- What we need to do is to make the modifications, changes, additions to the existed legal system.
- The differences come from the characteristics of the Internet. Therefore, the law is not able to resolve all of problem arising out of the characteristics inherent to the Internet.
- We can gradually make better our legal system to achieve the better balance of the interests of the public, copyright owner, ISP and user.

Thank you for your attention!

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