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Research on the Legal System of Copyright Protection of We Media Platforms

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Abstract

With the development of we media, the global knowledge system and communication platform can be connected with each other under the support of Web2.0 technology, and any general public can "speak up" in public through we media platforms. This social phenomenon that everyone can be a "publisher" has caused many copyright infringement risks and disputes. The reason lies in the bias of interests in China's judicial identification standards for the infringement liability of we media platforms and the defects of system design for the copyright clauses of we media platforms in legislation. In this study, we believe that the optimization of legal regulation of copyright on China's we media platforms needs to start from the evolution of network copyright protection rules. We should systematically analyze the judicial decision rules of copyright on we media platforms, and propose optimization strategies through the causes. China's copyright protection of we media platforms should conform to technological development, require we media platforms to bear more copyright protection responsibilities, and effectively reconstruct the duty of we media platforms in legislation. It will not only help solve many copyright protection problems caused by we media platforms, but also promote the sound operation of China's we media platforms, and safeguard the legitimate rights and interests of copyright owners.

Keywords: We media platforms;copyright;protection

1. Problem raising

The prototype of the we media platform originates from the early social platforms - blog and online community, where people participate in the discussion of topics of interest in the form of text and pictures, and express their views or opinions on something, forming a virtual network social space. With the maturity of Internet technology and mobile terminal device technology, the form and participating groups of we media platforms are also gradually changing, from blog and online community to diversified carriers with social interaction as the core, attracting the participation of professional organizations. Up to now, the we media platform is no longer a single social multi-carrier platform, but has developed into an emerging cross-border carrier that integrates e-commerce platform, live streaming platform and so on. The participants have also expanded from individuals, groups and professional organizations to non-media platforms, such as e-commerce platforms.

1.1 The active user number of we media platforms is gradually increasing

According to the 2016 we media Industry Insight Report, as of March 2016, the active user number of WeChat public platform reached 762 million, the number of Headline(Toutiao)

accounts increased by more than 30% in a month, and the daily reading quantity reached 700 million. These data indicate that more and more people are participating in the use of we media platforms. At the same time, the age range of we media platform users includes not only teenagers under 25 years old but also middle-aged and elderly people over 55 years old. In terms of users' age, the popularity of we media platforms has also increased significantly. The we media platform breaks through age boundaries and single social functions, which is consistent with Japanese scholar Nakayama's (1997) argument that "we are entering an era of ‘million publishers'".

1.2 We media platforms pursue the business model of profiting from high traffic

The purpose of the we media operation is to obtain economic benefits, and its operation mode is to generate economic returns by realizing high traffic. However, in the protection of intellectual property rights, profits and responsibilities must be in a relatively balanced state. If either party is missing, incalculable losses will occur. The traffic-oriented operation mode of we media platforms has essential difference from that of traditional official media platforms. Traditional official media platforms have their own long-term contracted journalists and writers, who can not only publish their own works but also disseminate the works of other copyright owners by obtaining copyright authorization. On the other hand, the we media platform does not produce works by itself, but is operated by attracting users to publish works on the platform and realizing traffic into profits through clicks. This means that the key point of profiting from we media platform is that the platform can maintain the quantitative output of works. In other words, a steady stream of works is the guarantee of platform income. Under such an operation mode, more and more we media platforms begin to participate in the content production, cooperating with we media creation teams, signing contracts with well-known verified users; or providing users with capital, management,traffic-attracting and other supports for their production, so as to ensure the circulation of traffic within the platform.

In the protection of network copyright, the biggest challenge we need to face is the brand new changes brought by the communication of works (Wang Qian,2011). Through the operation model of we media platform, we can see that the profit model of we media platform is more diversified than that of traditional official media platforms. We media platforms can obtain direct profits from user-uploaded works and advertisement delivery, such as reward withdrawal and advertising fees, as well as some indirect benefits. This diversified profit model breaks the inherent profit model of traditional media, makes the communication of works directly related to the interests, and brings new challenges to copyright protection.

1.3 The legal application of we media platform and four types of traditional network service providers

We media platform is a virtual network platform that provides services for users' online activities and a link between all parties of we media activities. To trace the we media platform from the perspective of the legal nature of copyright law, generally, we media platform belongs to the "network service provider" in the network copyright law, but there are slight differences. "Network service provider" is an intermediary formed under the influence of Internet technology and running through the "right holder and network user", which can help realize the rapid production and communication of works. In order to adapt to the influence of "network service provider", the traditional copyright protection system has adjusted the legal major structure in the field of copyright from "infringer - right holder" to the basic structure of "network user - network service provider - right holder". It can be seen that the emergence of the main part "network service provider" has become a key variable to promote the process of network copyright protection system.

Articles 20 to 23 of the Regulations on the Protection of the Right to Network Communication of Information classifies Internet service providers into four categories: network service providers providing automatic communication, automatic caching services, information storage space and search and link services, where it is stipulated that the two types of network service providers providing automatic communication and automatic caching services are not subject to the "notice-deletion" rule and can be exempted from liability completely. But for the two types of network service providers that provide information storage space, search and link services, they need to meet the "notice-delete" rule before entering the protection of the exemption clause. The Regulations on the Protection of the Right to Network Communication of Information classifies "network service providers" from the perspective of functions, and more from the perspective of providing single service functions. As an emerging "network service provider", we media platform undertakes comprehensive network service business with convergency-diversified service types. With the development of digital media technology, we media platforms not only provide hardware and software services and virtual places for users' creation activities, but also engage in e-commerce commodity sales, live streaming, on-demand and other services. Therefore, if we divide the types of we media platforms solely from the perspective of their functions, the overlapping legal identities of we media platforms will be objectively formed. This is the difference between we media platform and the four types of traditional network service providers.

On the other hand, the traditional classification of network service providers is based on the information network communication right and the DMCA Act of transplantation. The Tort Liability Law stipulates that "network service provider" includes any subject at any time, that is, it does not divide the types of network service providers. Does it mean that even the two types of network service providers providing automatic communication and automatic caching services are exempt from liability under the premise of meeting the "notice-deletion" rule? The answer must be no"(Cui Guobin,2014). It is not difficult to see from this contradictory logic that the Regulations on the Protection of the Right to Network Communication of Information has obvious inflexible inapplicability to the classification of "network service providers" and obvious lack of inclusiveness in other applicable fields of network copyright.

To sum up, whether from the perspective of practical development of we media platforms, or from the theoretical logic of laws and regulations related to network service providers, the selection of applicable laws for we media platforms in the face of copyright protection is faced with many disputes. In the era of the comprehensive popularization of we media, we media platform has become a mainstream tool for most social groups to obtain information or spend time. The inevitable impact of the generalization of we media platform is that the speed of information communication is accelerated, the range of communication is expanded, and social phenomena such as users' distortion of hot topics and plagiarism are aggravated. Therefore, we must attach importance to the copyright protection system related to the we media platform, analyze and determine the problems facing the protection of works on the "we media" platform from the legislative and judicial levels, and put forward specific suggestions on feasible paths, so as to be helpful to the legislation and judicial practice of the copyright protection system of the we media platform in China.

2. Evolution of copyright protection system of us media platforms in China

We media platform is an operator based on the network that provides hardware and software services and virtual places for participants to carry out various we media activities.

Although it is difficult to determine the legal nature of the we media platform in the current laws, it generally belongs to network service providers, no matter from the perspective of normative basis or functional characteristics. Therefore, the research on the copyright protection system of we media platform needs to start from the aspect of network copyright protection and focus on the legislative evolution and logic of the copyright protection system of network service providers.

2.1 Blank period of legislation

Like other countries in the world, in the early days of the development of the Internet, China experienced the awkward situation that copyright protection could not be relied upon in the Internet environment. China promulgated the Copyright Law for the first time in 1990. Since the social development at that time had not reached the current level of widespread digitalization, the legal system of the Copyright Law promulgated in 1990 did not limit the liability of the content related to the network copyright protection. With the introduction of Internet technology into China in the mid-1990s, the high-tech industry supported by Internet technology has developed rapidly, and people's use of the Internet has been continuously improved. Copyright issues caused by the Internet lifted the veil of the legislative blank of network copyright protection in China's Copyright Law around 2000. On December 14, 1999, the six writers' copyright dispute case heard and decided by Beijing First Intermediate People's Court was the first case of network copyright infringement in China. The judge of the case held that digital works only transform the works of copyright owners into forms of expression by using computers, rather than forming new works. Such transformation was an act of transportation without creativity. The copyright of digital works still belongs to the copyright owner, and the use of others' works on the network should be carried out under the premise of the authorization of the copyright owner (Yang Baiyong,2000). This judicial decision makes the absence of network copyright protection in the Copyright Law come to light, and the protection of network copyright can be solved only by judicial practice. The flexible theoretical application and interpretation of the Copyright Law by judges cannot fundamentally solve the contradiction brought by the development of the Internet to copyright. This calls on the legislature to form the system protection of network copyright at the legal level, and the awareness of network copyright protection in China is beginning to show the first sign.

2.2 Sprouting period of legislation

Faced with the reality that the traditional Copyright Law cannot be applied to the Internet technology and the digital works produced, the Supreme People's Court first responded through judicial interpretation. The Interpretation of the Supreme People's Court on Several Issues Concerning the Trial of Computer Network Copyright Dispute Cases (hereinafter referred to as the Legal Interpretation of Network Copyright Dispute Cases), which came into effect on December 21, 2000, is the first step taken by China to solve the lack of network copyright protection legislation, marking that the protection of network copyright in China has entered the preliminary stage of legislation.

The Legal Interpretation of Network Copyright Dispute Cases draws on the advanced legislative experience of other countries in the world, and introduces the terms in WCT and WPPT, such as concepts of "digital works" and "network service providers", to provide judicial support for the protection of network copyright in China. The concepts related to network service providers include: 1. Introduce the concept of "network service provider", and actually distinguish between direct infringement and indirect infringement; 2. Introduce the "warning - remove" rule; 3. Stipulate the disclosure obligations of "network service providers". It is worth mentioning that in the Legal Interpretation of Network Copyright Dispute Cases, China transplanted a large number of rules related to "network service providers" in the US DMCA

Act and incorporated the network copyright infringement liability of "network service providers" into the system of traditional tort liability law. Specifically, the legal interpretation divides the types of tort liability by distinguishing the types of behaviors provided by network service providers. It stipulates that if network service providers "participate" in the infringement through the network, they shall bear the direct tort liability in the joint infringement. The torts of "abetting" or "aiding" belong to the indirect torts of joint torts. In terms of fault identification, the fault identification of NSP's indirect tort liability is also specified in detail, and it is clarified that "know" should include "know + should know".

In the form of judicial interpretation, China has responded to the lack of legal provisions on network copyright protection for a long time, filling the legal gap for network copyright protection to a large extent. However, judicial interpretation itself is used to explain specific issues related to the specific legal norms applicable to cases when judicial organs use legal provisions. Compared with the complex and huge network copyright infringement problem, the content is sparse and simple. To solve this problem, it is still necessary to return to legislation.

2.3 Emerging period of legislation

As mentioned above, the Legal Interpretation of Network Copyright Dispute Cases is not the carrier of legal system in the real sense of copyright protection for network service providers. In 2001, when lawmakers made the second amendment to the Copyright Law, aiming at the increasingly fierce network copyright problem, they only increased the right of "information network communication" to respond to the copyright protection problems brought by the development of Internet technology. It is worth mentioning that in the Copyright Law amended in 2001, the legislator did not mention the limitation of liability related to the copyright protection of network service providers, and only authorized The State Council to separately restrict the specific provisions on the right of information network communication. In 2006, The State Council promulgated the Regulations on the Protection of the Right of Information Network Communication, which stipulated the relevant contents in the right of information network communication by transplanting the DMCA Act of the United States, and initially established the rules of "safe haven" in the protection of network copyright in China.

There are 27 articles in the Regulations on the Protection of the Right of Information Network Communication, among which Articles 20-23 are related to network service providers. This part is mainly derived from the transplantation of the DMCA Act of the United States, which classifies network service providers into: automatic transmission service provider, automatic network cache service provider, information storage service provider, search link service provider, and the exemption conditions shall be specified. At the same time, Article 13 and Article 25 stipulate that network service providers have the obligation to provide the information of their service users to the copyright administration department.

The Regulations on the Protection of the Right of Information Network Communication transplants the mature rules of network copyright protection in the advanced countries of the world at that time into the regulations, including safe haven rules and fair use rules,etc, and then expands them. At the same time, it clarifies the scope of application of the rules and formed the protection regulations suitable for China's judicial decision. To some extent, it marks the initial establishment of China's network copyright protection system.

2.4 Formative period of legislation

The Regulations on the Protection of the Right of Information Network Communication is the legislature's response to the lack of protection of the right of communication through

information Network in the Copyright Law under the influence of the Internet environment. However, since a considerable part of the Regulation is based on the transplantation and inheritance of the DMCA Act of the United States, it shows obvious adoptive tolerance in legislation. Moreover, when introducing such rules as "notice-deletion" and exemption clauses, the regulations did not consider the contradictions with Chinese legislative tradition. As a result, the conflicts and contradictions in the use of the regulations are increasingly apparent, and more and more network copyright owners are calling on the legislature to implement the network tort liability protection system with Chinese characteristics. In the Tort Liability Law of the People's Republic of China, adopted by the Standing Committee of the National People's Congress in 2009, network infringement is stipulated as a special act.

2.4.1 Tort Liability Law of the People's Republic of China (The Tort Liability Law)

The Tort Liability Law is a law formulated to protect the legitimate rights and interests of civil subjects and clarify tort liability. Therefore, the restriction on the tort liability of network service providers in the Tort Liability Law actually expands the scope of tort protection of network service providers from the original right of information network communication to all civil rights and interests. The Tort Liability Law aims to balance the relationship among copyright owners, network users, network service providers and social groups. In Chapter IV "Special Provisions on the Subject of Liability", Article 36 stipulates the tort liability of network users and network service providers for infringing others' civil rights and interests by using the network from three aspects, among which paragraph 1 is a principled provision. Paragraphs 2 & 3 stipulate the joint liability of network service providers. It is worth noting that the highlight of the Tort Liability Law is to expand the scope of tort liability protection for network service providers; change the "warning - remove" rule to the "notice - necessary measure" rule, and change the exemption clause of the "notice - remove" rule in the DMCA Act to the imputation clause in tort liability Law. On the contrary, Tort Liability Law does not further explain "joint liability" and does not make a detailed distinction of "knowing". In other words, the Tort Liability Law, through Article 36, transforms the exemption system of four types of network service providers based on the "notice - deletion" rule of the US DMCA transplanted into the Regulations on the Protection of the Right of Information Networks Communication to form the tort protection system of network service providers in China.

2.4.2 Provisions of the Supreme People's Court on Several Issues concerning the Application of Law to the Trial of Civil Dispute Cases Concerning Infringement of the Right of Information Networks Communication (The Provisions)

Although the Tort Liability Law stipulates the tort liability of network service providers in the high-level law, the Internet technology is constantly updated and developed. In the face of the ever-changing network copyright infringement problems, the Tort Liability Law and other relevant regulations still lack specific judgment standards in the actual cases of network copyright infringement. On the other hand, by 2012, China had also issued a number of laws and regulations on the protection of network copyright, and the connection and application of these laws and regulations also require further clarification by legislators.

After repeated deliberations on the General Principles of the Civil Law of the People's Republic of China, the Tort Liability Law of the People's Republic of China, the Copyright Law of the People's Republic of China, the Civil Procedure Law of the People's Republic of China and other relevant laws, meanwhile taking into account actual trial cases, the Supreme People's Court issued the Provisions in 2012. The use of the Provisions further enriches China's network copyright protection system, and is also a sign of the formation of China's network copyright protection mechanism.

According to Wang Yanfang (2013), for the protection of the right of information network communication, the legal liability conditions of network service providers have always been a constant concern of legislators, and the promulgation of the Provisions has become the key to solve this problem. A total of 16 Articles of the Provisions clearly require that the people's court should take into account the interests of the right holders, network service providers and the public when adjudicating civil disputes involving infringement of the right of information network communication. At the same time, it also stipulates that almost all issues related to the protection of the right of information network communication at all levels should be clearly defined. The specific performance is as follows: 1. Distinguish the types of infringement acts, and stipulate that the service providers who provide works directly belong to the provision of works, should bear direct infringement liability. As to service providers that do not provide technical services to users, it is stipulated that their behavior is a service providing behavior and they bear indirect tort liability. 2. Extend the theory of joint tort rules, and transplant the indirect infringement theory of DMCA Act of the United States into the traditional Chinese civil law theory. The tort liability of network service providers can be divided into two types, namely abetting infringement and aiding infringement, according to the types of behaviors of network service providers in the process of providing services. 3. Clearly stipulate behaviors of "know" and "should know", establish the Chinese style "red flag principle". 4. Clarify the principle of fault identification, and explain the infringement behavior of network service providers from the perspective of subjective fault. If the network service provider knows (including "know or should know") that the infringement occurs but fail to take necessary measures to stop it, the subjective fault is emphasized. And provide detailed identification standard of "know or should know". It requires network service providers with direct profit behavior to bear higher duty of care.

2.5 Developing period of Legislation

The Civil Code of the People's Republic of China, which came into effect on January 1, 2021, is a basic law of the highest rank, second only to the Constitution. As the basic law of market economy, the basic code of conduct for citizens' life, and the basic basis for judges to adjudicate civil and commercial cases, the Civil Code prejudges China's market economy when it is legislated. In the face of the rapidly rising market economy status of the Internet industry, the Civil Code pays special attention to the protection of civil rights related to the Internet, including the protection of personal private information, online virtual property protection, electronic contract protection, citizens' portrait right protection and online infringement protection. In Articles 1194 to 1197 of the Civil Code, the copyright protection mode of network service providers is limited in terms of tort liability. Its unique legal status, to a certain extent, can promote the extension and development of network service providers' copyright protection mode in other statutory laws in China, and become the carrier of copyright protection system for China's network service providers.

The provisions of the Civil Code concerning the copyright protection of network service providers are formed by extracting and condensing the "common factors" of the legislative theoretical achievements in various periods of China from the sprouting period to the establishment period. Due to the unique position of the high-level basic law, the content of Civil Code is expressed in more general ways. The copyright protection of network service providers is embodied in Articles 1194 to 1197. The highlights of the Civil Code in the design of copyright protection system for network service providers are as follows: 1. Expand the provisions for valid notice; 2. Provisions on "necessary measures" for network service providers are required to be related to prima facie evidence and type of service; 3. Clarify the

party liable for the loss caused by the false notice; 4. Make detailed provisions on counter-notification; 5. Refine the expression, from "know" to "know or should know".

The dilemma faced by copyright protection of we media platforms from the perspective of judicial practice

At present, the application of law on the copyright protection of we media platforms in China is still based on the limitation of tort liability of network service providers. In terms of the identification of tort liability, since the right of information network communication establishes two forms of infringement, direct infringement and indirect infringement. In the copyright protection of we media platforms, judges also refer to this classification standard, that is, direct infringement is constituted if we media platforms directly participate in or cooperate with the creation of the works of the right holders, or directly provide the works of the right holders. If the we media platform only provides network services, it constitutes indirect infringement. According to the Legal Interpretation of Network Copyright Dispute Cases, indirect infringement of we media platforms can be divided into two types: aiding infringement and abetting infringement. Specifically, what kind of infringement liability should be borne by we media platforms still should be investigated, including their faults and the implementation of "notice - necessary measure".

3.1 Summary of judicial precedents on copyright protection of we media platforms

In this paper, "Kluwer IP Law" is used as the retrieval tool, with "we media platform" and "copyright" as the keywords for case retrieval. In order to improve the effectiveness and relevance of the search results, the cases are selected step by step as "copyright ownership and infringement disputes". After eliminating the cases unrelated to the research topic and batch litigation cases, Finally, 40 representative sample cases in the past 3 years are sorted out.

Among the 40 sample cases, 58% of the judicial decision on the infringement types of we media platforms constituted direct infringement. The court judged the act of providing copyright owners' works without permission as direct infringement by basically referring to Article 3 to Article 6 of the Provisions, and the judicial principle was consistent with the act of "directly providing works of right holders" mentioned above. In the part of indirect infringement, the involved we media platforms in the 40 sample data were all judged to constitute aiding infringement. In the judgment of aiding infringement, the court generally conducted review based on the principle of fault identification, focusing on the fault behaviors of we media platforms that they knew or should have known and directly obtained benefits. At the same time, we judge the duty of care and implementation review of the we media platform according to the behavior of directly obtaining benefits. As for the sentence of joint infringement, among the 40 samples, only one case was judged to constitute joint infringement, namely the case of Yidian Wangju Technology Co., Ltd. and Xiong Wei. By reviewing the cooperation agreement between "Yidian Wangju" and "Feng Media", the court presumed that Tianying Jiuzhou Network Technology Co., Ltd. is an affiliated enterprise or partner of Yidian Wangju Technology Co., Ltd., and the two corporations are aware of the cooperation mode of uploading and synchronizing works. This mode of cooperation will inevitably lead to the expansion of the dissemination scope of infringing works, so the cooperative subject should have a higher duty of care for the ownership examination of works.

As for the fault examination and identification of we media platforms, the court basically judged the "know or should know" situation of we media platforms about the infringements. Regarding the recognition of we media platforms' "know or should know", the

court mainly started from the principles of "popularity", "notice - necessary measure", and the service content of we media platforms and the types of infringing works. That is to say, we media platforms engaged in professional matters such as film, television and cultural books should have a basic understanding of the industry rules, and those involved in professional matters such as film, television and cultural books should know that copyright owners generally do not allow a third party to spread their works for free.

The court's investigation of the principle of "notice - necessary measure" mainly focuses on the validity and completeness of the notice. However, it is worth noting that among the 40 sample data, copyright owners who initially protected their rights by means of "notice" only accounted for 13%, and the vast majority of we media platforms had received infringement notices from copyright owners before receiving response materials. This suggests that the principle of "notice" is lacking in practical operation in judicial practice. On the other hand, the investigation of necessary measures is mainly reflected in two key elements of "timely" and "reasonable".

In terms of direct profit and duty of care, courts usually believe that for we media platforms that only provide technical services but have no fault in the process of management and operation, courts usually only assign general duty of care to them in judicial practice, but impose higher requirements on behaviors that can directly profit from works on the platform. Another point of concern is that although the provisions of high duty of care among legal judges are based on direct profit, it can be seen from the sample data of 40 cases that the court will consider the duty of care comprehensively from the four aspects of platform service type, service content (such as providing film and reading services), type of infringing works and the popularity of the platform.

3.2 The dilemma faced by copyright protection of we media platform

From the previous 40 sample data, it can be seen that in China's judicial practice, the legal application of issues related to the copyright protection of we media platforms is indeed based on the liability model of network service providers, but it does face various difficulties in the actual application. This is manifested in the identification of infringement types, the provision of "notice - necessary measure" and the identification of fault liability.

3.2.1 Lack of maneuverability of the "notice - necessary measure" principle

In the copyright infringement protection system of network service providers in China, the principle of "notice - necessary measure" is the most powerful way to determine that network service providers clearly "know" the existence of infringement, and is also the core content of China's Internet copyright infringement liability clause. However, according to the sample data, 87% of the right holders did not give priority to the principle of "notice - necessary measure" to protect their own copyright, and 55% of we media platforms only took necessary measures to infringing works after they knew about the infringements on the platform because of receiving the response materials. This data shows that in the judicial practice of copyright protection on we media platforms, only a very small number of copyright owners are willing to take "notice - necessary measure" to deal with infringements. Because "notice - necessary measure" is not a pre-process as stipulated in the Regulations on Information Network Copyright Protection in practical application, but is ignored or shelved by the right holders. This phenomenon reflects the lack of effectiveness and maneuverability in the rule setting of "notice - necessary measure".

3.2.2 The specific content of fault liability principle is not perfect

The fault liability principle is a key factor in determining the indirect tort liability of network service providers in China. The expression of different legal provisions on the standard

of fault identification of network service providers is not completely consistent. The Tort Liability Law defines fault as that network service providers "know" that network users infringes the civil rights and interests of others by using their services. The Civil Code states in principle that network service providers "know or should know" what constitutes infringing acts. The Judicial Interpretation on Disputes over Infringement of the Right of Network Information Communication reflects that the fault of service providers includes "know or should know" the infringement. Although various legal provisions differ in the expression of fault, but its meaning is basically the same - to take "know or should know" as the specific main identification standard, and supplemented by other auxiliary rules to determine.

However, laws and regulations do not provide objective criteria for the identification of "should know", but guide through identification factors, which makes courts often judge the "should know" behavior of we media platforms through "duty of care" in judicial practice. In the sample data of this study, in the case of Beijing SOHU and Hunan Broadcasting System, the court held that SOHU, as a well-known network service provider, had professional information management ability. Therefore, SOHU had reasonable reasons to know about the infringing acts and should bear a high duty of care for infringing works. While in another case related to SOHU, the court held that SOHU platform, as an information storage service provider, stored a large number of works on the platform, so the platform did not have the ability to review each work, so it should not know the occurrence of infringement acts on the platform, and need not bear a high duty of care. The main bodies involved in the two cases are both Beijing SOHU New Era Information Technology CO.,LTD., but the court's identification of the platform's "duty of care" and "should know" is completely opposite. One court, based on the high visibility of SOHU we media platform, held that it should bear a high duty of care and should know the occurrence of the infringement. The other argued that SOHU is only a we media platform that provides information storage services and is not capable of reviewing all works on it. The key reason why courts make different decisions on "should know" for the same we media platform in judicial practice is that the "should know" provision of current laws is not clear and definite.

On the other hand, when it is identified in judicial practice that the self-media platform "should know" about the infringement, a higher duty of care will be required of the platform, and the duty of care in this case includes both prior and subsequent attention. That is, duty of care refers to the fact that we media platforms should pay attention to the works uploaded by users to prevent the appearance of infringing works. The duty of care also requires we media platforms to delete or disconnect infringing works in time after knowing the infringing acts. However, the judicial provisions on the duty of care only appear in Article 11 of Judicial Interpretation on Disputes over Infringement of the Right of Network Information Communication. If network service providers directly gain economic benefits from users' works, they should be identified as having a higher duty of care. It can be seen that in laws and regulations, legislators only place a higher duty of care on the behavior department that directly profits. But it doesn’t explain whether it is the prior obligation, the post obligation or the duty of care in other situations.

According to the sample data, the court does not have a uniform standard for the identification of the specific content of the duty of care, and the identification factors vary from case to case. In the case of Beijing SOHU and Hunan Broadcasting System, the judge argued that SOHU we media platform has a high reputation and should have professional information management ability. Moreover, SOHU platform automatically adds watermark to works when users upload works, which changes works. SOHU's advertising in infringing works should be considered as a direct profit behavior. Accordingly, SOHU should bear a higher duty of care.

In the case of Beijing Yidian Wangju and Xiong Wei, the court held that the two we media platforms involved were in a cooperative relationship, which would inevitably lead to the expansion of the dissemination scope. Therefore, we media platforms should bear an excessive duty of care. In the case of Hunan Golden Eagle Animation Co., Ltd. and Nanning Four-door Technology Co., Ltd., the court held that the we media platform involved is the public account of film broadcasting, and according to the service content of the platform, it should know that general copyright owners will not allow film and television works to be played for free on the third platform, and when playing the infringing works, it placed advertisements. Therefore, it was deemed as gaining direct profits, and we media platforms should bear a higher duty of care. In the case of Sogou and Alibaba Literature, the court held that the search service provided by the we media platforms involved in the reading software was equivalent to a direct supply of works, so they should bear a higher duty of care.

To sum up, the current provisions on duty of care mostly appear in case analysis, and the law does not provide uniform and explicit provisions on "duty of care". Even in judicial practice, the court gives an interpretation of the duty of care through judging subjective faults. This phenomenon will lead to the content addition of the self-interpretation of the stipulation of duty of care by the court in specific cases, which may lead to the we media platform bearing more uncertain obligations, which is not conducive to the interests balance in judicial trials.

4. Suggestions to improve the legal protection of copyright on us media platforms

The copyright protection system of we media platforms in China is based on the DMCA Act of the United States, and transplanted and reformed in combination with the legislative thoughts of traditional Chinese civil law and the development level of network service providers. Therefore, the defects and difficulties of the copyright protection system of we media platforms in China are mainly caused by external and internal reasons. For external reasons, the US DMCA Act is not applicable in China; for internal reasons, there are certain limitations in the design of copyright protection system for network service providers in China. In this paper we believe that, to reform the copyright protection system of China's we media platforms, firstly we should eliminate the inapplicable rules and systems in the US DMCA Act. Secondly, considering the progress of current network technology, we should build a copyright protection system of we media platforms centering on duty of care, which should be emphasized through laws and regulations, industrial rules, judicial interpretations and other documents, so as to essentially change the provision that traditional network service providers do not bear the duty of care.

4.1 Clarify the identification criteria of "should know"

China chose an open way to list six factors in the identification standard of "should know" in its laws and regulations, instead of condensing its subjective and objective factors like the United States. With the development of The Times, it is inevitable that the enumerative judgment standard will be improperly applied to the application of new network service providers. As for the identification criteria of "should know", in this paper we hold that it can be clarified from the following three aspects: 1. The subjective factors and objective factors should be clarified to form a consideration model combining "knowing of the implementation of specific infringements + obvious infringements"; 2. The factors listed in the current legislation are classified according to subjective and objective factors. For example, the network service providers' initiative to select, edit, modify and recommend works, performances and audio and video products is listed as subjective factors, and then consider

the extent of the network service providers' subjective understanding of infringement. The information management ability that NSPs should have and the obvious degree of infringing works are listed as objective factors, and then evaluate the NSPs objectively from the angle of general rational person; 3. Appropriately expand other relevant factors in line with subjective and objective conditions, such as whether the infringement information is in the management page of the network service provider.

4.2 Set the "notice - necessary measure" rule as a pre-litigation procedure

In the 40 sample data, only 13% of the right holders choose to take notice as the first step to protect their rights, which indicates that although the "notice - necessary measure" rule exists as the core content in legislation, it is ignored by most of the right holders in the actual judicial practice. In this paper we believe that it is better to change the "notice - necessary measure" rule into a pre-litigation procedure than to let the rule exist in vain, which can help the we media platform to protect the copyright.

First of all, take the "notice - necessary measure" rule as the pre-procedure of litigation, which can save litigation costs. For both the right holder and the we media platform, the cost of dealing with the infringement by the we media platform will be less than the litigation cost. For the right holders, we media works themselves have the characteristics of fast transmission speed and high efficiency requirements. "Complaints" and "reports" by the right holders can greatly save time and cost, stop the spread of infringing works in time and reduce the cost losses brought by litigation, compared with the means of litigation. For we media platforms, the "notice - necessary measure" rule as the pre-procedure of litigation can effectively promote the we media platforms' attention to infringements, strengthen their efforts to stop infringements, and improve the efficiency of the we media platforms in dealing with infringements. In terms of litigation procedure, taking the "notice - necessary measure" rule as the pre-litigation procedure can reduce the difficulty of proof for the right holder. When the right holder gives an effective notice on the infringing works, it is confirmed that the we media platform has subjectively known the infringing acts, which can reduce the burden of proof for the litigation subject and simplify the hearing process.

4.3 Improve the duty of care system for copyright protection on we media platforms

As an emerging product of the Internet information age, the huge wealth value realized by the traffic of we media platform is not consistent with its corresponding duty of care. From the perspective of revenue or business, we media platform should indeed bear a higher duty of care. From the perspective of copyright infringement liability undertaken by we media platforms, both external infringement pressure and internal operation mode of we media platforms require them to undertake more duty of care. In judicial practice, the court's duty of care to the we media platform is more about the platform's duty of care after infringement, and rarely mentions the we media platform's prior and in-process obligations. In this paper we believe that, in order to improve the construction of the duty of care system for copyright protection of we media platforms, it is necessary to consider the operation mode, income and current technical means of we media platforms, extend the duty of care to pre-obligation and in-process obligation, and improve the provisions of post-obligation, so as to form a complete set of duty of care system.

4.3.1 Increase the pre-obligation of we media platforms

The first step to build the duty of care system of we media platforms is to increase the post-obligation of we media platforms. In particular, to increase the duty of care of We media platform during the uploading and publishing of works. In the 40 sample data, the main reason why most of the we media platforms bear direct infringement liability lies in the fact that we

media platforms cannot provide or completely provide the information of the actual infringing users. Therefore, increasing the pre-obligation of the we media platform is conducive to proving the actual infringer on the one hand, and it will play a certain role in preventing and inhibiting the infringement in the we media environment on the other hand.

In the pre-obligation setting of the we media platform, the process of real-name registration system should be improved first. The specific operation method can be the registration system of uploading ID card, face, iris and other physiological characteristics information, so as to ensure the accuracy of each registered user's real name and facilitate the we media platform to quickly find the personal information of the very user when the infringement occurs. Secondly, the registration system of one person and one account can be implemented to change the low registration threshold of the we media platform. This practice can effectively prevent repeated infringement of content, cut off users whose accounts are blocked due to infringement at the source, register new accounts again on the platform, and continue to engage in copyright infringement. Finally, in the operation of the we media platform, users will be forced to improve their personal information, including but not limited to user name, user valid ID number, user valid mailing address and contact information, so as to facilitate the we media platform to promptly contact the infringing users and directly stop the infringing behaviors after discovering such behaviors.

In the process of signing user agreements between the we media platform and users, the legal liability for infringing others' copyright should be emphasized, and users should be explicitly prohibited from infringing others' copyright on the platform. At the same time, the link of signing user agreement can not only be limited to user registration, but also can be extended to users before uploading works, so that the copyright protection measures of we media platforms are more rigorous. To be specific, before users upload works, the platform can sign a copyright protection commitment letter with users for uploaded works, and requires users to choose the necessary identification of uploaded works. Identification selection means that, when being uploading, the work needs to be in accordance with the list of options on the we media platform to make the choice of the source. The choice can be set as "original work", "authorized reprint", "unknown authorization, deleted immediately if infringement occurs" and so on.

All the above are the pre-obligations proposed for the working process of the we media platform. At the technical level, the we media platform should be required to undertake special review obligations, that is, to create the copyright review index of the we media platform and perform the review obligations according to the index. Nie Jing and Cheng Haiyan (2020) pointed out that when we media platforms carry out censorship obligations, the usage of fingerprint recognition, block-chain technology, artificial intelligence(AI) technology and other high-tech methods can be considered to realize collaborative review and real-time update of the infringement blacklist, so as to ensure the continuous and accurate improvement of the identification accuracy of we media platforms. Specifically, the works database can be established through the we media platform, the works uploaded by users can be compared with those in the database, and their similarity ratio can be set. When the similarity reaches the specified ratio, the system will make the choice of sending the works to the manual for second review or failing to pass the review.

4.3.2 Strengthen the in-obligation of we media platforms

The in-obligations of the we media platform are reflected in the supervision and review obligations of the we media platform on the uploaded works after the users have passed the preliminary review of the works. Specifically, if the platform classifies and recommends the

uploaded works, it shall undertake the obligation to review the works. For popular works, trending works or works with high traffic to undertake, it shall undertake the obligation to review the works.For works with promotion or purchased traffic from the platform, it shall undertake the obligation to review the works. When the platform places advertisements or gain commission from users' works, it shall undertake the obligation to review the works. For works that have been recommended several times in the platform algorithm, it shall undertake the obligation to review the works. In the recommendation algorithm of the we media platform, the platform should take the copyright legitimacy as a basic parameter in the basic parameter of the algorithm recommendation, and further recommend works with clear copyright, while refrain from recommending works with unclear copyright. On the other hand, in the normal operation of the we media platform, a reward mechanism for reporting infringement can also be set up to encourage other users on the platform to participate in copyright protection and publicize the concept of copyright protection through the reward mechanism.

4.3.3 Improve the post-obligation of we media platforms

The post-obligation of the we media platform mainly refers to the obligation of the platform to stop the infringement and cooperate with the judicial investigation after the infringement occurs, such as reasonable measures to stop repeated infringement, the obligation to provide the copyright owner with the identity information of the infringer, the obligation to cooperate with the judicial organ to conduct the infringement investigation, and the obligation to provide the report of the illegal behavior clue. Because it is difficult for ordinary copyright owners to collect evidence for infringing acts in copyright dispute cases of we media platforms, and the difficulty in confirming the subject of infringement and the complexity of identifying tort liability are common collective problems in copyright infringement cases of we media platforms. Therefore, the improvement of post-obligation of we media platforms after infringement occurs will greatly benefit the copyright protection of the platforms. We media platforms possess absolute technological means and natural advantages for collecting evidence and fixing infringements. From the perspective of network service providers, we media platforms have the obligation to cooperate with judicial organs for post-investigation of infringements within the platforms. From the perspective of operation and management of the we media platform, as the operator of platform activities, it has management obligations for the platform itself. And setting active management as post-obligation can improve the post duty of care of we media platforms.

On the other hand, from the perspective of post-management, strengthening the management obligations of we media platforms in preventing repeated infringements can play a role in regulating user behaviors. He Qiongqiong (2012) pointed out in her research that as early as 2010, France adopted the Law on the Promotion of the Protection and Communication of Network Creation to regulate the repeated infringements of network users, and used the "3 Strikes" mode to punish the repeated infringements of network users by network disconnection, penalty or even imprisonment. It can be seen that "post mode of strengthening obligation" plays a positive role in building a healthy network copyright environment. Therefore, in this study we believe that China should also establish a system combining punishment and education on repeated infringements, and improve platform punishment measures for copyright infringement on we media platforms. For users who have infringed copyright, punishment and compulsory education shall be given according to the number, nature and circumstances of the infringement. For users who have repeatedly infringed copyright and whose circumstances are serious, permanent prohibition shall be their punishment. For users whose circumstances are relatively minor, a compulsory requirement of studying and examination of copyright law for

a specified period of time shall be the punishment. You know, it will help those network users establish the consciousness of copyright protection.

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