

An overview of copyright infringement

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Abstract: Intellectual property rights including copyright (also called copyright), trademark right, patent right, trade secret rights. Copyright is most easily obtained, but it is most vulnerable with fuzzy right range. The complexity of copyright manifests itself in the diversity of the object, the richness of the content of rights and the variety of infringement forms. With the enhancement of intellectual property protection, intellectual property is becoming more and more valuable. With the rapid development of the Internet, the types of copyright infringement are increasing, the identification of infringement is more and more complicated, and the protection of copyright is more urgent.

Keywords: copyright, infringement, constitutive requirements, type of tort.

INTRODUCTION

The purpose of the Copyright Law is to protect the copyright of the copyright holder and to punish the copyright infringement, thereby benefiting the rights that have been infringed. The copyright is more special than the trademark right and the patent right, since once the work is completed, the copyright is automatically generated without the authorization of the relevant unit. Compared with many kinds of infringement, the copyright infringement is more uncertain. In judicial practice, whether the same case constitutes copyright infringement, the first instance and the second instance court may make a very different verdict. Therefore, it is of great significance to clarify the concept, constituent elements and the types of infringement of copyright infringement.

For example, the network service provider, which is a relatively broad concept, and for this concept, academics have different views. Some scholars believe that the main body of network service providers can be divided into two categories: The first category is to organize, select information and provide web content to the public through the web; the second category is the various types of intermediary services that through the provision of facilities, means and technical support to carry out online information dissemination. Some scholars believe that: we should from a broad and narrow sense to understand the concept of network service providers [1]. Generalized network service providers refer to all individuals and organizations that provide network services, the narrow sense of the network service provider refers to the main body provide technical support and services to the network information dissemination [2]. Thus, we can see that different scholars have different understanding, and the concept of expression is also very different. Then, in determining whether it constitutes a fundamental concept of infringement will have a different point of view.

(1) Concept

Copyright infringement means that someone does not have permission from the copyright owner or the relevant owner, Use the object of right person to be protected by the copyright (Such as works, performances, audio and video products or radio and television programs, etc.), except as otherwise provided by law.

Constitute the elements

Objectively there is a real damage. The fact that inflicted the copyright owner or the public interest has occurred and produced certain damage to the consequences. For example, distorting and tampering with the works of others can damage the personal rights of the author, and if there is any adverse effect, it will violate the construction of socialist spiritual civilization and harm the public interest.

The behavior of the perpetrator is illegal. The perpetrator must implement the copyright law expressly prohibited behavior, so his/her behavior constitutes an offense. For example, when someone use works that already have copyright, he must strictly abide by the copyright law and its related laws and regulations, otherwise his conduct is illegal.

There is a causal relationship between the facts of damage and the consequences of the damage. For example, pirated computer software in the market flooding, to the real production and development of Computer Software Company's products impact, so that its sales to reduce, or even lose the market, resulting in huge losses. So, the direct cause of this loss is the emergence of piracy, and the causal relationship between them be established.

Subjective the perpetrator has faulted. Due to the automatic creation of copyright, the possibility of being infringed great and No-fault behavior if causing damage, should also take responsibility. Subjective whether there is a fault to determine the form of responsibility and the severity of the plot.

The type of copyright infringement

According to the relationship between the perpetrator and the work protected by copyright, the copyright infringement can be divided into two types: direct infringement and indirect infringement.

Direct infringement

Direct infringement refers to the infringement of the right to the copyright owner to a certain extent caused direct damage, and it is unlawful for him to exercise the copyright of a copyrighted work [3]. For example, without the consent of the copyright owner, nor in accordance with the relevant provisions of the law, regardless of any means, unauthorized publication, modification, reproduction, distribution, performance, recording, video copyright owner's work, are the direct Infringement. In this case, the infringer is directly involved in the work of the copyright owner, and the wrongful act of the infringer directly causes damage to the exclusive right of the copyright owner. This is also the most common of copyright infringement.

Indirect infringement.

It can be seen from the literal expression that indirect infringement is a form of infringement corresponding to direct infringement. In contrast to direct infringement, the illegal act of indirect infringement does not directly infringe upon the copyrighted works of the right holder. The actor is only consciously or unconsciously involved in the infringement, but this behavior has infringed the copyright of others to provide a convenient condition, and then on the legitimate rights and interests of the copyright owner caused indirect damage. Indirect infringement relies on direct infringement, as a prerequisite for the existence of direct infringement of others, which is based on contact with direct infringement and expands the consequences of damage on the basis of direct infringement. The indirect infringement of copyright is mainly manifested in the following forms:

Abetting, luring or helping him to infringe the copyright of the right person. In China, it is regarded as a joint infringement, and to bear joint civil liability, and in foreign theory and practice, this behavior will be called indirect infringement. For example, the case law of American copyright stipulates that a person with the basic knowledge of copyright, to lure others and cause them to violate the copyright of others, or to provide material basis for the infringement of others, will bear indirect tort liability. This situation needs to meet two requirements at the same time: the first is the defendant for their own infringement prior knowledge, the second is that the defendant has encouraged, participated, or has been assisted by the infringement of copyright [4].

The Indirect behavior that perpetrator himself has neither directly committed the infringement nor tempted or helped others to commit the infringement. But if he does not stop the act, it will lead to the occurrence of direct infringement or may increase the damage caused by direct infringement. For example, Article 24 of the UK Copyright Act provides that, without the permission of the copyright owner, In the case of knowing or having reason to believe that a designed or modified tool is intended for the purpose of making a copy of the work and will be used in the production of infringing copies, the actor put it into the UK and the business process, which will constitute copyright infringement.

Whether the perpetrator uses the contract based on the contract between the parties, we can divide copyright infringement into two types: Copyright infringement due to breach of contract and copyright infringement not due to contract default.

An important way for a copyright owner to exercise his or her rights is to establish a licensing contract with a unit or individual that uses his or her work in order to clarify the rights and obligations between the parties. The person who uses the work may infer the copyright owner's copyright in the process of performing the contract. Such as the translator at the time of translation of the work to a certain degree of distortion or tampering, and thus damage the original author of the integrity of the work. However, we should note that the breach of copyright contract does not necessarily infringe on copyright. Of course, the copyright owner's copyright damage due to contract breach, not necessarily in the performance of the contract. It can be said that, in addition to breach of contract caused by copyright infringement, other violations can be considered as copyright infringement not due to the breach of contract.

With the continuous development of society, people's awareness of the protection of their rights is gradually increasing. Especially as the copyright of the need to pool the rights people a lot of time and effort to produce works, we should pay more attention to its

protection, which will promote the diversified development of society and enrich the social life.

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