

Research on the Problems of Administrative Regulations of Webcast in China

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Abstract: The support of the technology platform has enabled the rapid development of China's webcast industry, especially after 2016. It has promoted the development of many fields such as economy and culture, but at the same time it has exposed some problems and even appeared to be illegal and criminal. In order to solve these problems, China's administrative agencies have formulated a series of legal norms, but there are still some problems to be solved. Administrative legislation has the inherent advantage of webcast regulation due to its proactive regulatory enforcement and lower threshold characteristics. Therefore, this article focuses on the issues of administrative legislation in the field of webcast. The article first categorizes the content of the webcast administrative legal supervision, analyzes the problems in the current webcast administrative regulations, and puts forward corresponding optimization suggestions, regulates the webcast order, and lays a good foundation for the development of the webcast industry.

1. Introduction

After several years of development, webcast has made great progress, and the number of users has now exceeded 422 million. Government supervision should be predictable and advanced, but with the development of technologies such as P2P streaming live broadcasting, the government is in a passive position due to information lag and technical shortcomings in webcast supervision. Webcast supervision has become an urgent issue in the administrative law.

The supervision of webcast in China basically follows "the government supervises the platform, the platform supervises users, and the government generally does not directly supervise users". Problems often occur in webcast, which shows that this model has not achieved good results. However, as an emerging thing that relies on the Internet, there are many irregular behaviors behind online live broadcast. If these behaviors are not restricted, it will not only be detrimental to the healthy development of the live broadcast industry, but also have a certain negative impact on the entire Internet industry in China. As the most commonly used legal means for regulating the Internet in China, administrative law should play a role in the regulation of live webcast.

2. Content Classification of the Administrative Law on Broadcast

At present, the level of laws and regulations in the field of webcast in China is low, and supervision has not yet formed a complete system. As far as the current regulations are concerned, the main supervision content can be summarized into the following three categories.

2.1 Webcast Content Supervision

The content supervision of webcast is the most important in broadcast supervision. Due to the diversity of webcast content, it has received a lot of criticism, such as vulgar and pornographic content. The legislation for the supervision of live web content is relatively fragmented, including criminal law, network security law, public security management law, copyright law, and civil law. There are three main directions of webcast supervision: 1. Spreading statements that endanger national security, mainly regulated by criminal legislation. 2. Infringement of the civil rights of others, the corresponding supervision is mainly based on complaints from users of the live broadcast platform. 3. Infringement of copyright.

2.2 Webcast Copyright Supervision

Some broadcasts are relatively simple, with almost no income, and copyright issues are not prominent. However, large-scale game live broadcast programs have beautiful scene design, which takes a lot of time and a lot of manpower to complete, and can produce huge economic benefits. Therefore, such live broadcasts need to protect their copyright. At present, China has not issued a regulatory document on the copyright of live broadcast programs. The typical case is the case of Yaoyu Company suing Douyu Company for copyright infringement of live broadcast events. In 2018, a seminar on legal issues in the online game industry, held at the School of Law of Tsinghua University, had an intense discussion on the legal attributes of game live broadcast programs and their copyright protection. Judge Su of the Beijing High Court advocated the protection of similar film works, and some experts advocated the establishment of a new type of legal interest protection for similar data rights. The issue of copyright protection is an important issue to be solved urgently in the field of webcast.

2.3 Broadcast Business License and Qualification Supervision

According to Article 5 of the “Administrative Regulations on Internet News Information Services”: “Providing news information through webcasts, etc., you must obtain an Internet News Information Service License.” Without the permission of relevant news qualifications, they shall not engage in the internet news service industry. Article 6 of the “Regulations on the Administration of Internet Live Broadcasting Services” stipulates that the provision of audiovisual program services through network performances, etc., shall obtain the corresponding qualifications prescribed by laws and regulations according to law. The “Regulations on the Management of Internet Audiovisual Program Services” require that legal persons engaged in network audiovisual service programs must be wholly state-owned or state-owned enterprises and have no illegal records within three years. The number of users in the field of online live broadcasting in China is growing rapidly. The qualification requirements for live broadcasting platforms and anchors in China will be higher and higher, and the relevant legal regulations will be more and more perfect.

3. Problems in the Administrative Legal System of Webcast

3.1 The Government's Supervision of Live Streaming Platforms is Insufficient

Network broadcast platforms not only need to implement the real-name system, but also need to conduct a comprehensive survey of those who will be signed up. Therefore, the government restricts the content of live webcasts, and it is necessary to prohibit from the source the dissemination of video texts that have a negative impact on society. At the same time, administrative organs should take a reasonable approach to guide the public to actively participate in a connotative and healthy webcast.

3.2 The Subject of Administrative Regulation is Scattered and Hierarchical

The administrative regulation of webcasting is not essentially equivalent to the legislative basis of the Internet. At present, there is no clear legislative basis for webcasting, and there is no legal system for webcasting. Only the “Network Security Law” is formulated by the Standing Committee of the National People's Congress, and the other are basically the regulations issued by the Ministry of Culture and the Ministry of Industry and Information Technology, and all the regulations have the same level of effectiveness. Different positions will lead to conflicts in regulations, and problems will arise during implementation. Therefore, the administrative laws and regulations of live webcast have caused controversy in a series of issues such as the subject of supervision, the object of supervision, and the mechanism of supervision.

3.3 Industry Self-Discipline is Imperfect and Cannot Form a Joint Force with Administrative Supervision

The supervision of the administrative department has a great role, but the necessary auxiliary

role is also needed. Administrative supervision regulates webcasting through external deterrence, while industry self-discipline can achieve the healthy development of webcasting through internal guidance, which helps to make up for the shortcomings of administrative supervision. At present, in China's webcast, administrative supervision plays a leading role, industry self-discipline hardly plays a role, social organization is weak, lacks the right to speak to restrict enterprises, and it cannot fundamentally assist administrative agencies to supervise the webcast market. For example, in 2016, more than 20 online live broadcast companies in Beijing have tried to formulate a self-regulatory convention in response to the problems of the live broadcast platform. The convention divides the individual responsibility of the anchor and the main responsibility of the enterprise in detail. However, after the publication of the Convention, some vicious live broadcast incidents occurred, which made people wonder about the enforcement of the self-regulation convention. In addition, there is a community of interests between live broadcast platforms and anchors, and there are many disputes of interests between platforms. Therefore, in the absence of legal protection, the convention should not have much binding force on platforms.

4. Suggestions on Improving the Regulation of Administrative Law of Broadcast in China

4.1 Clearly Regulate the Administrative Subject of Webcast

At present, it is not necessary for China to establish an independent regulatory body for live broadcasting in addition to the Ministry of Culture, National Radio and Television Administration, and Cyberspace Administration of China. The scope of power of each regulatory department should be clearly divided, and the regulatory body of the network live broadcast should be determined. The National Radio and Television Administration mainly supervises traditional media and has fewer administrative functions. The Ministry of Culture is the unit responsible for the management of culture and art. The function of the Ministry of Culture is to manage major cultural activities. In May 2011, the General Office of the State Council issued a notice to establish an Cyberspace Administration of China, stating that the Cyberspace Administration of China is the internet information regulatory agency, responsible for implementing the relevant national network layout and promoting the legal process of internet information dissemination, and coordinating relevant departments to do a good job in Internet Cultural business layout. In August 2014, Cyberspace Administration of China was reorganized. At the same time, the State Council issued a notice authorizing it to manage the content of internet information and has the power to supervise the enforcement of laws. The purpose of the reorganization of the Cyberspace Administration of China is to solve the problem of “multiple supervision and cross-functionality” in China's internet governance. Therefore, the Cyberspace Administration of China not only has the legislative power, but also has the enforcement power. The Cyberspace Administration of China is also the office of the Central Network Security and Informationization Leading Group, so its advantages are more obvious in terms of monitoring the specific content of the network live broadcast. Through the above analysis, this article suggests that the supervisor of the network live broadcast should be clear for the network to avoid conflicts between various departments in order to monitor the network live broadcast program.

4.2 Establish a Unified Legal System for Network Supervision and Clarify the Legal Supervision of Live Broadcasting

China has not yet issued a set of special laws to regulate the infringement of live webcasting. Reasonable and perfect laws are the most powerful guarantee for the development of new things. Therefore, we should constantly improve the legislation to adapt to the development of webcasting, regulate the webcasting through laws, and purify the webcasting environment. This article believes that the legislature should fully recognize the harmfulness of online live broadcast infringement, and release the laws and regulations of online live broadcast management as soon as possible within the scope allowed by the law. In the law, the responsibility of the network live broadcast platform should be clearly defined. While obtaining economic benefits, the network live broadcast platform

should also perform corresponding responsibilities, proactively accept the supervision of the corresponding competent department, and establish a corresponding economic punishment mechanism for network anchors. The field of live webcasting is more technical, and legislators must fully listen to the relevant opinions of network technicians in the process of formulating relevant laws, and make a clear explanation in the legal provisions, so that the legislation and technology are closely combined to make the regulations more effective legal relations in the field of webcasting.

4.3 Cultivate the Legal Literacy of Netizens

Strengthening the propaganda of the rule of law and improving the legal literacy of netizens is one of the ways to purify the network live broadcast space. An important reason for the frequent occurrence of illegal content in online live broadcasting is that the live broadcast service providers and online users have weak legal awareness. Some audiences have distorted values and pursue vulgar entertainment. Focusing on improving the cultural literacy of netizens, the government is required to treat the rule of law propaganda as a systematic project. First of all, it is necessary to increase financial investment to ensure the material basis of the legal literacy promotion project. Secondly, we must mobilize the vast number of democratic organizations to participate in the improvement of legal literacy, and work together to build a high-quality society ruled by law. The improvement of the network cultural environment requires Internet service providers to actively take up their due legal obligations, actively purify the platform space, promptly eliminate the anchors of illegal live broadcasts, and use the advantages of the platform to increase legal publicity. Netizens establish good cultural values and cultivate healthy moral sentiments and aesthetic values. Create more high-quality live broadcasts to attract viewers and reject vulgar programs.

5. Conclusion

Through the discussion in this article, we can see that with the development and growth of webcasting, various problems have been exposed, such as infringement and dissemination of bad information in the course of webcasting, which caused chaos in the social environment. The purpose of administrative regulation of live webcast is to better play the role of administrative agencies as the main body of supervision over live webcast, but also to make up for the shortcomings of self-regulation and industry regulation in regulating live webcast. Rules are means. The purpose of establishing regulations is to achieve individual freedom and social prosperity through regulations. In the process of regulation, only by better combining administrative regulation, industry regulation and self-regulation, can we achieve effective regulation of live webcast, and then achieve the purpose of purifying the live webcast environment.

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