

Research on the Criminal Law Protection of Network Copyright

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Abstract: with the Popularization of Network Technology and the Advancement of Digital Technology, It is Inevitable for Countries to Protect Network Copyright by Criminal Law. Internet Copyright Infringement Has the Characteristics of High-Tech Crime, and Its Behavior is Very Different from Traditional Copyright. for the Infringement of Network Works, the Criminal Law Protection Policies of Various Countries Are More and More Perfect. by Combing the Criminal Law Protection of Network Copyright in China, the Text Analyzing the Current Problems and Cruxes, and Drawing on the Experience of Foreign Countries in the Criminal Law Protection of Network Copyright. This Paper Puts Forward Some Suggestions Such as Expanding the Scope of Criminal Protection of Network Copyright, Identifying More Scientific Criminal Charges, and Setting Criminal Law to Meet the Protection Needs of Network Copyright, So as to Promote the Healthy Development of Network Environment.

1. Introduction

1.1 Literature Review

As a part of intellectual property, network copyright is an important product of modern science and technology progress, and plays an important role in promoting knowledge progress. Therefore, the criminal law protection of network copyright has become the focus of all countries. At present, criminal law has made some achievements in the protection of Internet Copyright (Tao, 2006). Some scholars pointed out that in the Internet era, copyright infringement is constantly challenging the legal bottom line (DI, 2002). Therefore, the criminal law protection of network copyright is imminent. Some experts suggested that the protection of Internet copyright should be based on the principles of “for-profit” and “plagiarized distribution”, so as to make the public realize the seriousness of Internet copyright infringement (Hu, 2003). Some scholars have come to the conclusion after studying the criminal protection of network copyright that “without the approval of the copyright owner” can not be copied and distributed on the network. This view is supported by most criminal law scholars and network writers. According to Professor Zhang Mingkai, the act of spreading freely on the Internet without the permission of the author should be punished as the crime of infringing copyright (Shi, 2011). This can not only protect the rights and interests of original writers, but also promote the healthy development of online works. Other experts pointed out that China's criminal law norms cannot keep up with the pace of technological progress. The research on the criminal law protection of network copyright inevitably involves the research on network technology (CAI, 2015). With the progress of network technology, network works are also increasing, but network copyright is also under constant impact. China's criminal law is progressing, but its pace is hard to catch up with the evolution of Internet copyright. Therefore, China can learn from the advanced experience of the United States and other countries, improve the level of criminal law protection of network copyright, and promote the healthy development of cultural industry.

1.2 Purpose of Research

With the continuous development of science and technology, network technology came into being. Network not only shortens the distance between people, but also changes people's life style and thinking concept. In view of this, it is necessary to analyze the network behavior in the Internet

era from the perspective of legal norms. In the face of the call of the Internet age, the law must formulate the corresponding laws and regulations to respond. Therefore, in the face of the strong demand of network copyright, the copyright system should bear the brunt of it and formulate relevant laws and regulations. It is necessary to study the criminal law protection of network copyright and analyze the crime of network copyright from the perspective of criminal law.

2. Overview of Relevant Theories

2.1 Concept and Content of Network Copyright

Network copyright refers to the right of ownership of works enjoyed by the copyright owner.(Du,2010).With the emergence of a large number of network works, there are more and more infringement of network copyright. In general, administrative law and civil law are adopted to stop the infringement of Internet works in China. However, with the development of science and technology, network copyright infringement is becoming more and more serious, which needs to be regulated by criminal law. Network copyright includes the right of distribution and the right of use. Distribution right means that only the author of the original work has the right to distribute the work. All other original works copied or obtained through other channels are violations of the rights of the original author, and shall be punished according to the relevant criminal law. The right to use is an economic right of the copyright owner. Without permission, if anyone is found to upload and broadcast the work on the Internet at will, the original author can protect his own copyright rights and interests according to relevant laws.

2.2 Specific Norms of Internet Copyright in Criminal Law

In the early stage of legislation, it is difficult for legislators to foresee the rapid development of network technology, so it is not clear what harm network brings to copyright. As a result, the criminal law did not make clear provisions on the infringement of network works (Lu, 2016). Until 2000, the Chinese law promulgated the decision on maintaining Internet security, which stipulates that anyone who infringes the copyright of others by using the Internet shall be investigated for legal responsibility in accordance with the relevant criminal law. Since then, China revised the copyright law in 2001, which stipulates that the copyright owner has the right to record his works and their contents, and protect the rights and interests of the original author according to the information network tort law. The regulations on the protection of computer software adopted in 2002 and the regulations on the protection of the right of information network dissemination adopted on July 1, 2006 have made relevant provisions on the criminal protection of the Internet and the rights and interests of information network dissemination.

3. Problems in the Criminal Protection of Internet Copyright in China

3.1 Unreasonable Allocation of Criminal Law

In recent years, with the rapid development of network technology, countries all over the world attach great importance to the protection of intellectual property, especially to strengthen the protection of network copyright. The purpose of States to do so is to weaken the ability of recidivism and achieve the function of prevention by depriving criminals of their property and political rights. At the same time, the relevant criminal law, by depriving the criminals of the right to copy and use the network works in accordance with the law, dispels the criminals' idea of copying other people's works again, prevents the crime from being committed again, and achieves the role of warning other personnel and organizations engaged in related industries, so as to achieve the general purpose of prevention. However, at present, China has not introduced the relevant penalty system to combat the infringement of network works. Although the system of penalty and deprivation of various rights has been set up, it is still difficult to use in practice, which is not conducive to combat the increasingly rampant infringement of network copyright.

3.2 The Scope of Protection of Internet Copyright in Criminal Law is Limited

Although China has issued a series of regulations to protect Internet copyright, the content only involves art works, literary works and various intellectual patents, and only a few involve Internet copyright. China's protection of intellectual property rights is limited to civil and administrative laws and regulations, and the relevant provisions in the criminal law are not perfect. In fact, the personal right of the copyright owner is more important than the work right, although the work, as the valuable intellectual wealth of the copyright owner, is inalienable and can be measured by money. But as the basic right of the copyright owner, personal right can not be calculated by money. When the criminal infringes the copyright, the mental injury to the right owner is more significant. China's penalty only protects the right of authorship of literary works, and does not involve the right of authorship and personal rights of other types of works, which is not conducive to the overall protection of the legitimate rights and interests of copyright owners.

3.3 The Crime of Infringement of Network Copyright is Relatively Single

China has not made clear legal provisions for the infringement of network copyright, but only punished according to the relevant charges of traditional copyright crimes. According to the current copyright law, if there are eight kinds of criminal acts in the copyright law, those who have serious circumstances shall bear corresponding criminal responsibility. However, due to the lack of corresponding description of crime and sentencing rules for the infringement of network copyright in the penalty, the copyright laws and regulations are in vain. In addition, China's penalty only sets up two charges of infringing the product right and the right to use the copyright, which simply describes the two forms of charges, unable to punish malicious infringement of others' copyright. Especially in the complex network environment, the two charges in the penalty setting can not cover the varied network copyright crimes.

4. Suggestions on Improving the Criminal Protection of Internet Copyright in China

4.1 The Establishment of Criminal Law Should Meet the Needs of Network Copyright Protection

First of all, set up sentencing. Sentencing in dealing with the network copyright has a certain color of the times, especially for those who do not aim at profit infringers, just to achieve psychological satisfaction, sentencing can achieve more to reduce the occurrence of such criminal acts. At the same time, the relevant industries should be warned to cherish their qualifications and not destroy them for the sake of coveting one time. Secondly, the means of punishment are more diversified. At present, China's existing penalties only play a leading role in the network copyright, and there are no specific implementation regulations. In addition to providing for sentencing and fines, it may also provide for confiscation of property or deprivation of the qualification of criminals to engage in the industry. For the infringement of network works, which does great harm to the society, we can deprive them of their political rights and punish them by means of criminal law.

4.2 Expand the Scope of Criminal Law Protection of Network Copyright

With the rapid development of the Internet, network works are more complex and diversified. The network also includes not only the traditional literature, art, recording, video and so on, but also more new network carriers. Therefore, it is difficult to define the object of network copyright protection. Before, the protection of Internet copyright in China only involved products in traditional forms such as books and albums. The originality and non replicability of new carriers such as records or online music should also be included in the scope of criminal protection of Internet copyright. The newly revised copyright law expands the scope of network copyright protection, and the penalty should be adjusted in time to adapt to the development of network technology.

4.3 More Scientific Identification of Charges of Network Copyright

China's penalty only stipulates two charges of infringing the product right and the right to use in terms of network copyright, resulting in many charges unable to find the corresponding penalty regulations for punishment. Therefore, it is suggested that special departments should be set up to set up regulations on criminal protection of network copyright, and special punishment should be given to criminal acts, so as to reduce the infringement of network copyright. More scientific accusation means more reasonable punishment. If an adult infringes the Internet copyright, he or she may be disqualified from engaging in the industry and fined. For minors, the penalty can be determined according to the situation, but the ultimate goal is to prevent such infringement cases and protect the healthy development of the network environment.

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