

Research on the Protection of Creators' Rights and Interests of User-generated Content

Xinghui Fan, Lei Chen

Law School, Guizhou University of Finance and Economics, Guiyang, Guizhou 550025

Abstract: This paper aims to explore the dilemma and solutions of copyright protection in user-generated content (UGC). By analyzing the development status of UGC and combining with the relevant provisions of copyright law. It is believed that the rights and interests of creators are seriously damaged and the copyright protection is in trouble, and the protection of the rights and interests of UGC creators needs to be strengthened. It is suggested to establish the dominant status of UGC creators, implement the knowledge sharing agreement and the overall authorization mechanism of the platform, and restrict the solution path of UGC platform, so as to balance the traditional copyright interests with the development of emerging UGC, and promote the prosperity of society and culture.

Keywords: UGC; Copyright; Balance of interests

With the continuous development and growth of online platforms, the relationship between UGC creators and the platform has become increasingly complex. In order to pursue commercial interests, some platforms may ignore the protection of the rights and interests of creators, acquiesce in the occurrence of plagiarism, and even actively damage the rights and interests of UGC authors. This kind of behavior greatly strikes the creative power of the creators, and also hinders the innovation and development of the Internet culture. Strengthening the protection of the rights and interests of UGC creators is an inevitable requirement of industrial development. This not only requires the platform to strengthen the supervision and crackdown on infringement, but also requires the government, social organizations and the majority of users to participate in the supervision, strengthen the theoretical research on the protection of the rights and interests of UGC creators, and deeply explore the causes, influence and solution strategies.

1. Bad rights and interests of UGC creators

The material used by UGC creators generally comes from the Internet, so the content they create has direct copyright risks. However, even if there are traditional copyright risks in UGC, their creativity cannot be completely denied, and the labor paid by UGC creators and the value of their output are also worth protecting by law. UGC in games is different from general UGC. The materials used by its users are basically provided by game producers and platforms. Therefore, there is no infringement of unauthorized materials in traditional UGC. In contrast, UGC creators in the game industry are usually the ones whose rights are infringed^[1].

Since there is no direct interest relationship between UGC's interests and game producers or Internet platforms, in order to avoid unnecessary trouble, game producers or Internet platforms usually only provide nominal rights protection channels, and set up artificial obstacles in the process of rights protection channels. Since the distribution of copied UGC content on short video platforms will bring huge traffic, game producers and Internet platforms have huge commercial interests in this area, so the platform and game producers have no commercial incentive to stop such plagiarism.

In recent years, with the gradual increase of data value, network platforms usually add UGC authorization terms to their user agreements, generally including "exclusive authorization", "permanent", "free license" to use, etc., and even require users to transfer all the property rights of UGC to the platform for free. In Facebook, for example, it requires users to permanently authorize all the content they upload on the platform, without not changing the authorization even if the account is deleted. It is clear that these terms are obviously unfair, but obviously unfair contracts are irrevocable contracts, and the contract is valid before the cancellation. UGC creators are usually amateur creators and have their own jobs, and most of them UGC creators will lose their source of income once

they fall into litigation^[2].

2. UGC creators' rights protection dilemma

From the perspective of the system design of copyright law, the identity difference between creators, disseminators and users in traditional copyright is significant. However, due to the popularization of Internet information technology, productivity technology innovation has created a series of convenient creation tools such as Photoshop, and provides a circulation platform for works and open access channels. Therefore, the identity of the subjects, a person can be both a creator or a disseminator, or even the identity of the three. This is the inevitable result of the “decentralized” nature of the Internet, and the identity of UGC creators in copyright law also leads to the chaos of copyright.

In the copyright law, there are two systems for the use of others' works, the licensing system and the reasonable use system. In the traditional copyright industry, licensing is the main way for a work to realize its value and benefits. The licensing system is the embodiment of the autonomy between the creator and the disseminator, which can guarantee the control of the dissemination of works while realizing the interests of both sides. And UGC used in the creation of the original work is extremely large number, if alone looking for the copyright owner authorization is obviously does not conform to the economic efficiency, high time cost and economic cost, and UGC creation usually no direct economic interests, the lack of the possibility of active permission, and UGC creators themselves face the risk of infringement. The existing licensing mechanism is extremely weak in the process of UGC.

Rational use of the system is another possible approach. Reasonable use is a restriction on copyright. Under specific conditions, it can use its works without the permission of the right holder or payment. Because the Internet has the characteristics of open source, free use is more in line with the public's psychological attitude towards UGC. However, China adopts the legislative mode of closed enumeration, and stipulates 12 situations of reasonable use. In the possible cases: first, “personal use”, because UGC creation will spread through the Internet, obviously does not conform to the limitation of copying and interpretation in the private domain; second, “appropriate reference”, appropriate content, and not beyond the scope of introduction, comment or explanation, UGC works can be included, obviously not universal terms. Therefore, there are some obstacles in the creation and dissemination of UGC^[3].

3. Solve the path

3.1 Establish the dominant position of UGC creators

Although the identity of UGC creators in traditional copyright law breaks the balance of interests between creators, disseminators and users, it has obviously brought about economic increment in the whole social level. Although the creation of UGC may violate the rights of existing works, and its UGC content will contain parts of the original work, it will not replace the original work, but will promote the wide dissemination of the original work. Moreover, UGC is the expression of the creator's own ideas, and there are obviously differences between the expression and the original works. From the economic point of view, even if UGC only brings a minor economic impairment to the right owner of the original work, it will also produce greater economic benefits, which is obviously more beneficial to the whole society. At the same time, while protecting the right owner of the original works, the copyright law should also take into account the social benefits and balance the interests of the two. Therefore, it is necessary to establish the subject status of UGC creators and confirm the copyright of their works.

3.2 Knowledge-sharing agreement and the overall authorization mechanism of the platform

In order to supplement the deficiencies of the knowledge-sharing agreement, the traditional copyright not only obtains its benefits, but also makes UGC flourish as a whole, and the overall platform authorization model is gradually formed in the market. That is, the UGC platform obtains the authorization, and the UGC on the platform can use the authorized traditional copyright works. In the field of music, a model has been formed in which music producers upload music to professional platforms, and professional platforms authorize other UGC platforms as a whole, charge licensing fees, and divide music producers according to the proportion of the use times of the music. The overall licensing model of the platform fully complements the shortcomings of the knowledge sharing agreement, gradually popularizing this model in the music field to other copyright fields, and realizes the legalization of UGC.

3.3 Restrictions on the UGC platform

The UGC platform improperly infringes on the legitimate rights and interests of UGC creators through various terms such as “user agreement”. From the civil law point of view, most authorization terms are obviously unfair. However, the obviously unfair clause is the revocable clause, which requires an additional revocation act, which usually makes the parties involved in the litigation. From the perspective of competition law, the large provisions of exclusive authorization in the “User Agreement” are

clearly the abuse of the dominant market position of UGC platform. According to the relevant provisions of the Anti-monopoly Law, the platform with a dominant market position adopts the exclusive authorization mode, which belongs to “additional unreasonable transaction conditions”, which obviously constitutes unfair transaction for users and deprives the economic interests of the transaction counterpart. At the same time, the “exclusive licensing” limits fair competition on other similar platforms, which clearly violates the anti-monopoly law. Therefore, the legitimate rights and interests of UGC creators can be protected by increasing the market antitrust crackdown.

4. Epilogue

UGC is no longer a new product, but it has not improved the legal system in this field. There is still a long way to go to protect the rights and interests of UGC creators. UGC is of great significance in promoting the prosperity and development of social culture. Therefore, how to balance the economic interests of traditional copyright with the development of emerging UGC is a problem that the law needs to respond to. Under the framework of the existing system of copyright law, the dominant position of UGC creators in copyright law is established, the legalization of UGC is realized through the Internet knowledge sharing agreement and the overall authorization mechanism of the platform, and then the abuse of dominant market position of UGC platform, finally realizing the balance of interests of all parties and the development of UGC industry.

References:

- [1] Chen Ying. Copyright protection of user-created content: Positioning, dilemma and outlet —— Take the third revision of the Copyright Law as the entry point [J]. Social Science in Hunan Province, 2022 (01): 97-104.
- [2] Hu Li, He Jinhai. UGC authorization terms in the network user agreement: realistic picture and specification setting —— takes the user agreements of 40 network platforms in China as the sample [J]. Social Scientist, 2021 (2): 125-131.
- [3] Ni Zhengliang. The Copyright Protection Test of “User-Generated Content” [J]. Intellectual Property Rights, 2019 (01): 14-23.

About the author:

Xinghui Fan (1995—), male, born in Chongqing, master student of law School of Guizhou University of Finance and Economics, engaged in intellectual property research.

Lei Chen (1997—), male, born in Bijie, Guizhou province, graduate student of law School of Guizhou University of Finance and Economics, engaged in legal theory research.