

# From Policy Governance to Rule Governance ——Transformation of Intellectual Property Protection

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**Abstract:** With the coming of the information age, the protection of intellectual property rights in our country has gradually entered a transitional stage. However, at the present stage, there are still some problems in the protection of intellectual property rights, such as scattered legislation and weak judicial protection, which seriously hinder the transformation of the protection of intellectual property rights and affect the quality of the protection of intellectual property rights in our country. Finally, the author puts forward some suggestions on how to perfect the existing legislation and improve the administrative operation mechanism.

**Keywords:** Intellectual property protection; Policy guarantee; Rule guarantee

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## **1. Introduction**

The protection of intellectual property rights is an important embodiment of the framework governance system and governance capacity, and the protection of intellectual property rights of our country has undergone three major stages, namely, reversed force protection, reversed force protection combined with independent protection and supplemented by reversed force protection at the position of independent protection. At present, a systematic protection system of intellectual property rights has been initially established. However, under the background of the new era, the problems such as scattered and contradictory intellectual property legislation and weak judicial protection have seriously affected the transformation of intellectual property protection in our country.

## **2. Problems Arising from the Transformation of Intellectual Property Protection**

### **2.1 Decentralized IPR legislation**

The so-called decentralized IPR legislation means that although our country has promulgated the Trademark Law, the Patent Law, the Copyright Law and other IPR protection laws, the content of IPR protection is relatively decentralized, and some policies and laws lack connection with each other, and even self-contradiction exists [1].

Take, for example, the “Little Muddleheaded Wine Fairy” discovered by law enforcement personnel of the Fenghua Administration for Industry and Commerce in the course of law enforcement in 2016, which is being sold by a liquor distributor. The bottle is printed with the words “Little Muddleheaded Wine Fairy” and graphic logo, and the outer package is printed with the words “Little Muddleheaded Wine Fairy, Rare Muddleheaded”. Upon investigation, the dealer was able to provide the “Little Muddleheaded Wine Fairy” design patent certificate (filed in October 1999), and among the patented trademarks, the “Little Muddleheaded Wine Fairy” trademark was filed in 1997 before a certain employment limited company in Guangzhou. The case focuses on whether the “Little Muddleheaded Wine Fairy”, which owns the design patent right, infringes the “Little Muddleheaded Wine Fairy” trademark right. Facing this case, there are two opinions in administrative and judicial fields: one is that the infringement is tenable because the two trademarks are similar, and although the “Little Muddy Wine Fairy” has obtained the design patent certificate, the patent certificate is later than the “Little Muddy Fairy” trademark registration time; the other is that the infringement is not tenable, and the view is that the circulation time of the two commodities in the market is relatively long and the roots cannot be traced back, and the sales routes and channels of the two commodities are different, so it is impossible to determine whether the infringement is constituted. The main

reason for the contradiction between the two statements is that the Trademark Law and the Patent Law do not clearly point out the similarities and differences between the trademark right and the design patent right, and the corresponding administrative organs are different, and the administrative execution reference routes are different, resulting in the contradiction.

## **2.2 Weak judicial protection**

Judicial protection is weak, which means that at present China's IPR protection includes administrative protection and judicial protection, while some IPR holders suffer from IPR infringement. Administrative protection is one of the characteristics of IPR law enforcement in our country. However, the personnel of departments in some regions lack the concept of overall situation. In the process of implementing administrative protection, they focus too much on immediate interests, resulting in the obstruction of the handling of infringement cases, or failure to strictly enforce laws and regulations, or failure to crack down on infringement fundamentally, resulting in failure to effectively curb infringement<sup>[2]</sup>.

To 2021, A Hotel for which the main dishes shot a commercial promotional video, the video contains its size and other information. After that, the hotel found that Restaurant B had revised the video involved without authorization, deleted or blocked the business name information of Restaurant A and added the business name information of Restaurant B, and disseminated such information on the media platforms operated by Restaurant B such as WeChat official accounts and Dithering Sound. In this case, A Hotel filed a lawsuit and held that B Hotel committed a serious infringement and infringed A Hotel's video copyright and was used for unfair competition purposes. However, in the structure of the judgment of the case, the judicial organ held that B Hotel used the copyright video of others without the permission of the right holder, deleted or concealed the information of the name of the right holder and used it for dissemination and publicity, which constituted unfair competition, so the judicial organ required B Hotel to stop the infringement in accordance with the law and compensate A Hotel CNY500. Through the analysis of the process of the case, it is not difficult to find that there are clear and clear subjects of knowledge infringement and subjects of infringement in the case, but in the judgment results, there were problems with light judgment results, which failed to "sound the alarm bell" for the market, and failed to give a warning to other peers in the same industry. Such weak judicial protection did not play the role of judicial protection.

## **3. Countermeasures for the Transformation of Intellectual Property Protection**

### **3.1 Improving existing legislative provisions**

The aim of legislation is not limited to the protection of the legitimate rights and interests of authors, but rather to the protection of intellectual property rights, the establishment of property rights protection awareness, the encouragement of creation and the acceleration of the dissemination of knowledge. Legislation is the key to the superstructure and the basis of policy governance. Therefore, in the process of strengthening the protection of intellectual property rights, we should still focus on judicial provisions to optimize and improve the use system and license mode.

#### **3.1.1 Improve the use system**

Among the intellectual property rights contacted in the market at the present stage, the contents of intellectual property rights protection are not limited to books, trademarks and so on, but extend to audio-visual and video documents. Taking the case of "weak judicial protection" as an example, it is not difficult to find that our laws and regulations still prohibit infringement of online goods, and make special provisions for secondary creation. In fact, in addition to such cases, some videos created by individual accounts and not used for commercial purposes can be fully included in the scope of fair use. Based on this, it is suggested that China refine the categories and contents of intellectual property protection in the process of policy governance, and refine the system for the use of intellectual property rights by subjects, for example, on the basis of refine of trademarks, works, patents and trade secrets, refine the categories of videos, documents, audio-visual, words, etc., and improve the use system and the prohibition system according to different categories, so as to avoid the "one-size-fits-all" problem.

#### **3.1.2 Optimizing the licensing mode**

The so-called optimization of licensing mode is to broaden the scope of legal licensing by improving existing policies, so as to solve some copyright problems. In the process of legislation, legislators require users to pay remunerations to copyright owners according to the number and frequency of works used and the profitability generated by the videos in the statutory licensing scope of video, audio, short videos and other contents. Taking the aforesaid cases of "weak judicial protection" as an example, the judiciary may revise the original judgment in the process of judgment and make the following judgments: sort out the number of times, scope and period of playing of the original video and generate profits, and pay remuneration to the copyright owner at the rate of 30% to 40% of the profits.

### **3.2 Improving the administrative operation mechanism**

Administration plays an important role in the transition of IPR protection in our country. However, according to the problems of administrative operation in our country, it can be improved by strengthening unified registration management and optimizing administrative law enforcement efficiency.

#### **3.2.1 Strengthen unified registration management**

In terms of administrative operation, trademarks and shop names are a component part of enterprise names, and a graded system shall be adopted for their registration and administration in accordance with administrative provisions. The authorized person shall submit an application to the administration for industry and commerce at the place where the business is operated, and upon successful application, the trademarks and shop names shall be subject to judicial protection. In the case of “scattered intellectual property legislation”, due to the “Small Muddled Wine Fairy”, “Small Muddled Wine” long, and there are legal contradictions, leading to unable to unify views. Based on this, the administrative protection shall actively give feedback to the judicial protection, and require different enterprises to reformulate their trademarks in accordance with the judicial protection requirements, and strengthen the uniform registration of trademarks and trade names, so as to guarantee the administrative operation and administrative law enforcement.

#### **3.2.2 Optimizing the efficiency of administrative law enforcement**

First, an organization for collective administration of intellectual property protection shall be established. The National Copyright Administration shall, together with judicial departments and administrative departments, establish collective management organizations for the protection of intellectual property rights, intensify the detection of infringements on intellectual property rights, and assist the government in law enforcement; and, secondly, strengthen the cooperation between governments and enterprises. Government departments shall, in light of the characteristics of the information age, establish a digital copyright protection system, with government departments as the handgrip of macro-control of intellectual property rights and Internet enterprises as the market protection subjects, and build a stronger and more effective intellectual property protection system.

## **4. Summarize**

With the transition of intellectual property protection in our country, the improvement of many laws and the establishment of the Intellectual Property Court of the Supreme People’s Court have become international feats, showing not only the determination of intellectual property protection in our country, but also the effectiveness of judicial protection and the courage and courage of the reform of intellectual property protection in our country. However, with the transition of IPR protection in our country, there are some problems such as scattered IPR legislation and weak judicial protection. Based on this, the full text of the two representative cases as an example to better improve the use of the system, optimize the licensing system to improve the existing legislative provisions and strengthen the unified registration management, optimize the efficiency of administrative law enforcement to improve the administrative operation mechanism.

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