

Study on Copyright Infringement of Online Variety Shows

Yuwen Quan

School of law, Shanxi University of Finance and Economics, Shanxi 030006, China

592065156@qq.com

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Abstract: With the development of Internet technology and new media platform, online variety shows produced and broadcast by online video platform came into being. A wide variety of online variety shows keep flooding into people's attention. On the one hand, they meet people's entertainment needs and enrich the cultural industry. On the other hand, the plagiarism phenomenon of program formats happens from time to time. As network communication technology popularizes, the copyright protection of network variety shows has been widely concerned. This paper expounds the basic theory of online variety shows, analyzes the copyright infringement phenomenon of online variety shows in China, and finally puts forward relevant suggestions on how to regulate the infringement phenomenon.

1. Introduction

With the continuous development of mobile Internet, Tencent, Youku, iQIYI and other online video broadcast platforms stand out from the traditional TV media in the new media environment, and a series of online variety shows rise and gradually show a hot trend. Online variety shows have various types and are widely popular among audience. However, infringement of program formats happens constantly. Practically, it's necessary to regulate this phenomenon and guide the healthy development of online variety shows.

2. The Basic Theory of Online Variety Shows

Different from traditional TV variety shows, online variety shows are an emerging variety form which are broadcast on Internet platforms. According to a document issued by the Regulatory Center of the State Administration of Radio, Film and Television, online variety shows are produced by institutions or netizens. They are mainly broadcast by online audio-visual service platform such as video website, and the broadcast platform shall fulfill the responsibility of reviewing the program's content. Online variety shows are professional (non-drama) audio-visual programs that meet the needs of the public for art appreciation and entertainment, which make comprehensive use of various audio-visual means of expression, extensively integrate various art forms and create them for the second time.

In 2014, iQIYI created the network homemade variety shows -U can U BiBi, which broke through the traditional show mode, opening a new market of online variety shows. By 2017, the number of online variety shows had reached 197. As far as I am concerned, the reasons for the rapid development of online variety are as follows.

Firstly, Internet technology and new media platform support the production of online variety shows. The rapid development of the Internet industry has laid a foundation for the production and broadcast of online variety shows. Tencent, iQIYI, Youku and other major video media platforms are developing and flourishing. In the context of the era of big data, video platform predicts users' needs and understands hot topics by analyzing users' accumulated data of watching videos, thus providing a direction for the production of online variety shows.

Secondly, the change of people's habit of watching videos provides an opportunity for online variety shows. In today's society, there are fewer and fewer people using traditional TV

broadcasting media. On the contrary, more and more people prefer new ways of mass communication such as mobile phones and tablets. In addition, people's leisure time is fragmented, and they choose mobile terminals to watch video programs on the Internet, which lets them don't be bound by time and place as well as meets people's entertainment needs. The public's habit of watching videos has changed, providing an opportunity for the development of online variety shows.

Thirdly, the relatively loose network environment promotes the development of online variety shows. The State Administration of Radio, Film and Television has issued a cutback on entertainment, restricting the broadcast of entertainment programs by local satellite TV stations due to quality problems. Under the regulation of traditional TV programs, the development of TV market is limited to some extent. Due to the relatively loose environment and fewer restrictions of network broadcasting, a large number of program makers have turned to network platforms, producing diverse types of programs.

3. Copyright Infringement Phenomenon of Online Variety Shows

Copyright infringement refers to any act that infringes upon the property rights of copyright owners by distributing, copying, renting, exhibiting, broadcasting, performing, etc., without the consent of copyright owners. In 2018, Idol Producer and Produce 101 became the top two hit shows on video. However, the two major video platforms have different attitudes towards the copyright of original programs. Tencent paid a huge sum for the copyright to Produce 101 of Korea, an online variety show featuring girls' talent shows. However, at the Cannes TV Festival, the International Association for Formats Copyright Protection claimed that Idol Producer made and broadcast by iQIYI plagiarized, and its plagiarism similarity even reached 88 points out of 100, which set a new world record and became the highest degree of plagiarism in history. In terms of program's concept, competition's rules and visual design, this popular online talent show is almost identical with the Korea's Produce 101, which is shocking. In fact, many shows, including the Rap of China, Back to Field and the Chinese Restaurant have been accused of plagiarism.

The lack of legal protection of program formats and the weak supervision of online variety industry are the important reasons for the prevalence of plagiarism of homemade online programs. China's law requires that the object of copyright protection is the work. It protects the expression of the work. Certainly, the specific form of thought is protected, but not the thought contained in the work. In reality, producers often make their own programs by learning from others' program formats. They mainly copy the rules and procedures of competition, and design the stage, costumes, music, props and other specific forms of expression independently. Since China regards creative content such as program's rules as ideas and does not protect the variety show formats, network program producers avoid the risk of copyright infringement in that way.

4. Regulatory Measures for Online Variety Shows

Online variety shows have various types and are widely loved by people. They can meet people's entertainment needs anytime and anywhere. Meanwhile, the plagiarism of show formats exposed by them becomes more and more frequent. There is no creative cost to imitate the program format, but it damages the legitimate interests of the author of the original variety show format, which not only brings economic losses to the original author, but also discourages his initiative to create. In order to create a good network broadcasting environment and promote the benign development of cultural industry, it is necessary to regulate the infringement phenomenon of online variety shows. I will put forward the following suggestions from the perspectives of laws and regulations, government supervision and platform management.

4.1 Improve Laws and Regulations

Copyright infringement of online variety shows in China is basically plagiarizing program formats, but due to the restriction of "thought-expression dichotomy", the copyright of variety shows can't be directly protected by the current Copyright Law. Throughout the wide recognition of foreign countries on the copyright protection of variety show formats, the author thinks that in order to regulate the plagiarism phenomenon of online variety shows, we can modify the Copyright Law in the future and bring variety show formats into the protection scope of the Copyright Law. Especially for stage design, post-editing, shooting methods and other specific forms of expression, if these aspects involve plagiarism and thus constitute infringement, the originator can be deeply protected by copyright. As for how to determine the infringement of online variety shows, I think the general perception standard can be adopted. It is easy to find the similarities of show modes through the audience watches the programs. After the preliminary conclusion that the two programs have a high degree of similarity, the copyright appraisal agency will conduct a detailed comparison to comprehensively evaluate whether the program plagiarize or not.

The legislative purpose of the Anti-Unfair-Competition Law is to maintain a fair market competition order and prohibit any business conduct by unfair means. The online variety show format is a commercial achievement. With the continuous prosperity of the cultural industry, the commercial value of online variety shows has become increasingly prominent, so that unfair competition behaviors emerge in an endless stream. Therefore, the author suggests that the legislature can break through the provisions of the current Anti-Unfair-Competition Law. We should pay attention to the development of the entertainment and cultural industry, comply with the new legal requirements, and add types of unfair competition to supplement and protect variety show formats. It is forbidden to use the business achievements of others for improper reference. If excessive imitation reaches an improper degree and constitutes an infringement on the business achievements of the obligee, relief can be provided through the Anti-Unfair-Competition Law.

4.2 Strengthen Administrative Supervision

It will take a long time to formulate the law. Before the law is issued, relevant administrative regulations can be issued to regulate the cultural market by the State Administration of Radio, Film and Television (SARFT). The popular variety shows in China are almost accused of plagiarism. In practice, audiences are more resistant to plagiarism than producers. When a variety show is broadcast and found to be suspected of plagiarism, netizens will denounce it. Yet the authorities either keep silent or issue a self-justifying statement. Therefore, in order to improve the national copyright awareness and make the cultural industry develop healthily, it is a good choice to strengthen the administrative intervention at the present stage. When formulating policies on online variety shows, the government should pay attention to the copyright value of the program format, strictly regulate and impose administrative penalties on those who violate copyright. After broadcast programs are suspected of plagiarism, SARFT should review whether online variety shows are original or not. We should refine and clarify regulatory measures to rectify the variety show market.

4.3 Additional Platform Obligations

At the present stage, laws and government regulation are lagging behind. In order to effectively eliminate the phenomenon of copyright infringement of online variety shows, video website platform should be subject to the obligation of self-examination and autonomy. Many online variety shows are basically produced by video media platform, which manages the whole process of production, filing and review of online variety shows. If infringement is found in these processes, the program should be modified. If there is slight plagiarism, it can be adjusted by editing; If serious plagiarism, video broadcast platform should remove the variety show. Most video media platforms have the dual status of production and broadcast. Only when they attach importance to the program copyright can they effectively protect it. Add management and review obligations for video

platform, which enables producers to understand relevant copyright laws and enhance their awareness of copyright protection,. It is conducive to creating a good network environment and improving program quality.

5. Conclusion

Today, with the prosperity of cultural industry, variety shows have become an important part. Online variety shows highlight the development and diversification of China's cultural industry. However, some problems are gradually exposed. The phenomenon of copyright infringement of online variety shows is common, which reveals the problems of China's online variety show industry, the lack of legal protection of program formats' copyright and the loopholes of administrative supervision. In order to promote the orderly development of network space, create a good cultural ecological environment and improve the overall level of the variety industry, we need to regulate the infringement phenomenon of variety shows formats and rectify the online variety shows industry.

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