The Current Situation and Reflection of Online Picture Infringement on E-commerce Platform

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***Abstract**: In recent years, with the popularity of the Internet and the diversification of information dissemination, various e-commerce platforms have developed vigorously, and the problem of infringement of online pictures is also increasing day by day. Especially in the process of the commercialization of pictures, because of the various subject identities of the e-commerce platform, it is easy to infringe upon the rights of distribution, reproduction and information dissemination of online pictures. Due to the lack of legal awareness of e-commerce enterprises, legislative work is not perfect and other problems, the phenomenon of picture infringement often occurs. In order to promote the e-commerce platform to move forward in the direction of standardization and legality, it is necessary to co-govern with the joint efforts of enterprises, government, society and individuals, so as to get rid of the dilemma of online picture infringement.*

***Key words**: E-commerce platform; Online pictures; Infringement*

Introduction

With the support of Internet technology and digital technology, a large number of images have become within reach. Because the pictures are intuitive, vivid and convenient, they have gradually become the main propaganda method adopted by commercial enterprises. Especially for companies represented by e-commerce platforms, in order to achieve user drainage, infringement issues have become increasingly prominent, and the resulting legal litigation cases have erupted in large numbers. In 2019, the National Copyright Administration will include image copyright protection in the "Anti-internet Piracy Special Action" to protect the legal rights of copyright owners in accordance with the law. In the face of this regulation, e-commerce companies, as the hardest hit areas of online picture copyright disputes, must regulate themselves, raise their legal awareness, respect the rights and interests of copyright owners, and actively assume their own obligations and responsibilities.

E-commerce has flourished in China with its unparalleled convenience. The e-commerce platform realizes a variety of business models such as B2B, B2C, C2C, O2O, B2M, M2C, etc. through the Internet-based framework that is easy to expand. At present, the business of the e-commerce platform extends to many aspects, and gradually develops into a comprehensive service platform integrating multiple functions. The

gradual diversification of the operating modes and functional positioning of e-commerce platforms often results in the ambiguity of online picture infringement subjects, the concealment of infringements, and the expansion of the scope of infringement. At the same time, because online picture rights holders are eager to protect their own rights and interests, but lack the relevant legal awareness, e-commerce platforms (operators) and on-platform operators (direct infringers) are often the objects of compensation.

This article selects two representative e-commerce models: B2C and C2C. B2C, represented by JD, which sells products and services directly to consumers; a commercial retail model; C2C, represented by Taobao, serves as a third-party platform for consumers. An e-commerce model that provides services to consumers. We explore common online picture infringements on e-commerce platforms, hoping to provide constructive opinions and reflections on their compliance development.

Copyright of Online Pictures

Picture, in the traditional sense, refers to the plane media composed of graphics and images. Online pictures mean that with the development of digital acquisition and signal processing technology, more and more pictures are stored in digital form, so that they can be presented and disseminated through Internet media. According to the relevant provisions of the 2010 revised "Copyright Law", works must have originality, reproducibility and legality in order to have independent copyright. The Berne Convention enumerates the objects of copyright protection of related pictures, including artistic drawings, photographic drawings, design drawings, schematic diagrams and maps. Similarly, the digital representation of traditional pictures is bound to be protected by the Berne Convention and the Copyright Law.

However, the current system is clearly unable to keep pace with the development of the industry in the digital age, as the Copyright Law of China was published earlier. The regulations about picture copyright only stay on the traditional media platform of newspaper, periodical, radio station and TV station, but the copyright protection of picture platform under the network environment is still lacking. According to China's annual report on Internet copyright protection in 2018, judging from the types of infringing works, the number of copyright infringement cases against picture works has tripled compared to 2017, accounting for 44% of the total Internet copyright cases, and the degree of concentration of the subjects suing is relatively high, individual litigation accounts for only 10%. In addition, the copyright infringement mainly occurs in the network picture commercialization process, therefore "commercialization" defends the right situation to be in the majority.

Main Types of Online Picture Infringement on E-commerce Platforms

Subject of Infringement

(1) Direct infringement. Taking the B2C model as a representative of self-operated e-commerce companies, they disseminate online pictures and use them for commercial purposes without the consent of the right holder or the author. For example, e-commerce self-operated businesses embezzle emoticons, pictures,

photographic works for sale or put them on the product information page for external display, and use online pictures for commercial promotion, development of game characters, derivative peripheral products, and other illegal use of copyright owners' pictures behavior. In this case, the right holder has the right to demand that it bear corresponding responsibilities, including stopping the infringement, eliminating the impact and compensating for losses.

(2) Indirect infringement. The subject of indirect infringement is the C2C platform. Since it did not directly infringe the copyright of the picture, it bears joint liability. For example, by providing consumers with business information such as indexes and links of infringing pictures. In judicial practice, the "notice and removal" and "know" rules are used to determine whether the e-commerce platform operator is infringing and the infringement liability to be assumed. This rule was first applied to the copyright field and is relatively complete. With the rise of electronic commerce, online pictures are automatically merged into its copyright protection field. The "notification and removal" rule is a safe haven for e-commerce platforms. Platform operators are obliged to remove infringing content after they know the infringing images of merchants on the platform, otherwise it will constitute indirect infringement and bear compensation for losses.

Types of Infringing Images

In order to attract enough consumers, e-commerce platforms must enrich and diversify their own resources. In addition to image infringements occurring between the platform and external entities, image theft often occurs between merchants within the platform. According to the Berne Convention, the objects of copyright protection for pictures include artistic drawings, photographic drawings, design drawings, schematic diagrams and maps. The current online pictures can be divided into three categories:

(1) Online original pictures. For example, design drawings, art works, photographic works, original comics, etc. In order to maintain their original value, the author of the picture often does not take the initiative to upload it to the Internet for public dissemination. In most cases, the author authorizes a photo company to conduct commercial transactions. Therefore, photo websites have also become the main source of infringing images on e-commerce platforms.

(2) Online video screenshot pictures. For example, stills and promotional images of film and television dramas. The same style of celebrities and celebrities bringing goods will greatly increase the exposure of e-commerce platforms, so film and television stills are often placed on the product details page for display.

(3)Online material processing pictures, that is, deductive works under the copyright law of original pictures, should also receive the same protection as the original works.

Types of Copyright

Taking into account the characteristics of image infringement on e-commerce platforms, the author believes that such images have been published and disclosed through certain channels. Therefore, the infringement process mainly involves three types of copyright rights of the image: (1) The right of reproduction, that is,

the right to make one or more copies of a copyrighted picture work by printing or copying; (2) The right of distribution, that is, the right to provide consumers with the original or copy of the work by way of sale; (3) The right to spread information on the Internet.

The Reasons Why E-commerce Platforms are Vulnerable to Infringement

Pictures are Easy to Obtain, Low Cost and Good Effect

The technological progress and information dividend brought about by the development of the Internet have made e-commerce companies more convenient and diversified ways to obtain image materials. In addition, under the trend of media integration, traditional text-only publicity and marketing methods have gradually been replaced by "text + pictures", and "picture reading" has become the mainstream trend of fragmented reading. For e-commerce platform operators, in order to achieve successful publicity effects and meet the consumer needs of users, the use of pictures for product display has become the minimum standard. However, due to the lack of originality on some platforms, piracy and infringement of online pictures also occur from time to time.

E-commerce Enterprises Lack of Copyright Awareness

The first Copyright Law of China only came into effect on June 1, 1991. Compared with foreign countries, the Chinese public's legal awareness of copyright is relatively weak. The atmosphere of respect for creation and copyright in the whole society has not yet formed. Even some e-commerce companies are completely unaware of the copyright issue of pictures. They are not clear about the specific content and liability provisions of the "Copyright Law" and the "E-Commerce Law", and believe that all image resources can be used. The long-term existence of this "usage doctrine" has made infringement of the copyright of other people's pictures a recognized behavior and a common phenomenon in the industry.

The Driving Force of Economic Interests

In order to reduce costs, some e-commerce platforms often take advantage of regulatory loopholes to take risks. In addition, even if e-commerce platforms are subject to litigation by copyright owners, according to the current compensation amount, the losses of the enterprise are far less than the profits brought by the operation of the pictures. Even in extreme cases, there have been acts of "conniving to infringements" by enterprises, and then using relevant regulations to demand compensation from infringers.

Imperfect Legislation on Online Picture Copyright

The infringement of online picture copyright by e-commerce platforms is mainly reflected in three links, namely, copyright confirmation, transaction and relief. The legislative work in these areas needs to be improved. For example, at present, most pictures are determined by means of additional declarations or watermarks. Obviously, this does not apply to the characteristics of picture dissemination in the Internet era. In terms of copyright transactions, there is a lack of a unified copyright transaction collective management

organization. However, it is easy to fall into the commercial risk of infringement due to the inability to determine the right holder. In terms of copyright remedies, the compensation provided in the Copyright Law is minimal to online copyright infringement, and the judgment of losses and gains is also very vague and not practical.

The Shortcomings of E-commerce Companies in the Protection of Image Copyright

The Right Holder's Way to Defend Their Rights is Blocked

There is a lack of an entrance for right holders to send infringement and reporting notices, or the entrance is too concealed. Taking Taobao as an example, the right holder needs to enter the product search results page and follow the instructions of "Click on the upper right corner-feedback-report-report type-upload credentials". However, in the selection of reporting types, there are only two results: "selling prohibited items" and "counterfeiting and piracy", and there are no targeted options and reporting operations regarding (picture) infringement. The right holder could not smoothly issue a notice of infringement, and the rights protection could not be implemented.

The Contradiction between Profit Purpose and Review Responsibility of E-commerce Enterprises

The "E-Commerce Law" passed on August 31, 2018 appropriately increased the liability of e-commerce companies as a third-party platform. Appropriately strengthen the protection of e-commerce consumers, and transfer the governance of online image infringement to e-commerce platform operators. However, as a profit-making entity, the main business of e-commerce companies is to carry out commercial activities, not to manage infringement. There is still a certain dispute about whether there is a position and ability to arbitrate the dispute.

How Can E-commerce Operators Get Rid of the Plight of Picture Infringement

In general, in order to get rid of the problem of image infringement, e-commerce companies of any model need not only corporate autonomy, but also the joint supervision of individual consumers, platform operators, industry, society and the government.

Enterprises Prevent in Advance

E-commerce platforms must increase their legal awareness and actively consult with lawyers to avoid the risk of infringement. Respect the copyright of online pictures, and form a standardized path of "authorization first, subsequent use" for online pictures with a clear copyright owner. In order to avoid infringement from the source, try to create your own picture library.

Enterprise Infringement Remedy

According to the "E-Commerce Law", the rights holders of online pictures have the right to issue notices to operators of e-commerce platforms, requiring necessary measures such as deletion, blocking, disconnection of links, termination of transactions and services for the works involved. In response to infringements that have already occurred, e-commerce platforms should stop losses in a timely manner and set up convenient reporting procedures such as "notification-delete" to facilitate the smooth and legitimate rights protection of right holders and stop infringements on the copyright of pictures in a timely manner.

Improve Technical Protection

Innovate online photo copyright certification, tracking, and storage technology, and establish a unified photo copyright transaction protection platform. Use the advantages of Internet technology to create a high-quality picture copyright trading platform. Due to the decentralization and tamper-proof modification of the blockchain, any online picture right holder can perform copyright registration and proof of source through the Internet. In addition, through artificial intelligence and big data technology, it can help users detect and track infringements on the entire network, or remind whether the pictures used have infringement risks, standardize the transmission path of pictures, and actively guide the benignness of the picture copyright trading market development of.

Improve Legislation

The current "Copyright Law" was amended in 2010, and the latest "E-commerce Law" did not officially come into effect until 2019. In order to guide the practice of e-commerce platforms, governance must be carried out under the logic of Internet thinking. For example, consumers, e-commerce operators, and e-commerce platforms are the three parties involved in e-commerce, and their legal rights and interests must be maintained in a balanced manner when it comes to the copyright issues of online pictures. Especially when it comes to the responsibilities of e-commerce platforms, it must be detailed and clear. Only in this way can the law be operable.

Conclusion and Reflection

After more than 20 years of development, e-commerce has grown from a budding start to a vigorous development and then a mature growth. At this stage, e-commerce has gradually bid farewell to the era of "barbaric growth" and is moving in a standardized and legal direction. The promulgation and implementation of the "E-commerce Law" coincided with the timing, providing a framework for e-commerce to rationally use online pictures. Therefore, the governance of the e-commerce platform still needs to be explored in a degree of relaxation, so as to help form a new situation for the future development of e-commerce that is more intelligent, flexible and open.

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