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The "Copyright Troll" of Photographic Works in the Internet Era: A Study of Countermeasures and Legal Regulation

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Abstract

The Internet has brought great convenience to society, but copyright disputes have become more complex in the Internet era, and the new features brought about by the Internet have led to changes in copyright litigation. Taking copyright in photographic works as an example, the article briefly analyses the characteristics of copyright disputes in photographic works in the Internet era and introduces the "copyright cockroaches" (plaintiffs who seek to gain benefits by filing numerous copyright lawsuits). Through the analysis of overseas "copyright cockroaches" and the current situation of photographic litigation in China's current internet environment, we can see how the "copyright cockroaches" operate and how they make profits. As a result of the existence of "copyright cockroaches", not only do victims incur additional costs, but a large amount of judicial resources are also consumed in bulk litigation. In this article, we analyze the dangers of the "copyright cockroach" and provide potential victims with some possible measures to deal with the "copyright cockroach", as well as suggesting ideas for legal regulation.

Keywords

Photographs, Copyright, Batch Litigation, Regulations

1. Introduction

The abuse of litigation is an abhorrent phenomenon, but it is difficult to eradicate, so that the abuse of the right to sue the plaintiff is called "cockroaches". In the Internet era, copyright (commonly known as copyright) disputes have become more complex, and it is easier to obtain financial benefits from abusive copyright lawsuits, and there is an increasing trend of "copyright cockroaches".

The "copyright cockroaches" are detrimental to the interests of copyright owners and waste of judicial resources, while also causing harm to the copyright system and the intellectual property system, so it is necessary to conduct theoretical research and practical discussions on this phenomenon.

2. The Statement of the Problem and Review of Related Research

2.1. The Presentation of the Issue

The term "copyright troll" refers to an entity that derives a specific benefit from a copyrighted work with the sole objective of bringing a copyright infringement action to obtain compensation. A "copyright troll" is not necessarily the creator, distributor, performer, or user of a protected work; they may not have contributed anything to the creation of the intellectual work, and their profits are based solely on the copyright claim system. As "copyright troll" often have expertise in monitoring and enforcing infringement, they can reduce the cost of litigation and can bring claims against defendants that ordinary copyright owners might not choose to pursue. Moreover, from a procedural law perspective, the mode of operation of "copyright troll" usually conforms to the formal rules of normal copyright litigation. Indeed, the monetisation of copyright infringement as a business model has been practised for over a century. The first true "copyright troll", Harry Wall, emerged in England in the 1870s, buying "public performance rights" in order to force later parties to pay them 40 shillings in damages or use litigation. This model also became the mechanism by which the "copyright troll" operated. It is for this reason that it is difficult for the public authorities to find a suitable legal basis to curb the behaviour of the "copyright troll", because the root problem of the "copyright troll" is the problem between the legislative purpose of copyright law and the enforcement of copyright claims.

The label "cockroach" has long been a part of the patent system in the United States, and has rarely been addressed in the realm of copyright law. It was not until 2010, when the Internet began to be used on a large scale, that "cockroaches" began to enter the copyright arena on a large scale. The "copyright troll" take advantage of copyright incentives without contributing to the market for innovative works. In other words, the cockroaches are suppressing and impeding innovation, and wasting valuable judicial resources. Few scholars have discussed how "cockroaches" undermine the copyright regime or proposed institutional designs to mitigate the damage they cause.

Because the "copyright troll" lawsuit formally fits all the manifestations of a normal copyright lawsuit, and because this abuse has been brought about by the proliferation of the Internet, the large number of lawsuits has crowded out valuable judicial resources while allowing the cockroaches to reap far greater benefits than could be obtained from normal commercial sales. It is therefore necessary to study and regulate this abuse of public power for profit.

2.2. The Review of Relevant Studies

On the issue of "copyright troll", Yi Jiming and Cai Yuanzhen argue that the phenomenon of "copyright troll" reflects a head-on conflict between copyright owners and the public (Yi & Cai, 2018). The governance of the law should follow the established copyright regime and be creatively transformed in the Internet era: on the one hand, the interest groups of copyright owners should be adequately protected, while on the other hand, different measures should be taken to limit the loss of public interest to the minimum possible.

Guo Liang and Cui Ruilin believe that the extreme utilitarianism reflected by the "copyright cockroach" has distorted the copyright system, which is unable to achieve "individual justice", "social justice" and "compound justice". "It is not conducive to the realization of judicial purposes and the realization of social justice (Guo & Cui, 2023). Therefore, it is justified to regulate it, and it should be regulated from all angles, including legislation and justice.

In the United States, however, due to its relatively unique legal culture compared to other countries, there is a special study of the copyright troll system. There is a special study of the "copyright troll" system. The so-called "copyright troll", also known as "copyright speculation" or "copyright hooliganism", refers to the practice of copyright owners who, based on the successive acquisition of copyright in a work, bring infringement lawsuits or threaten to do so in order to gain unfair commercial advantage. The term "copyright roach" refers to the act of a right holder who, on the basis of his or her succession of copyright in a work, brings or threatens to bring a lawsuit for infringement in order to gain an unfair commercial advantage.

Scholars in the US have proposed different approaches to regulating "copyright troll", with Nicole Downing and others arguing for the use of "fair use" rules to curb "copyright troll" (Downing, 2010). Sonmez argues that courts should increase the cost of litigation for copyright cockroaches by reducing joinder, scrutinising jurisdiction and procedural rules, and thereby discouraging mass litigation (Sonmez, 2014). Matthew Sag argues that reasonable statutory damages should be set to reduce the profit margins of "copyright troll" (Sag, 2015).

3. The Phenomenon and Harmfulness of Copyright Infringement of Photographic Works

3.1. The Copyright Infringement of Photographic Works in the Internet Era

3.1.1. Difficulties in Determining the Attribution of Rights

In the age of traditional film photography, the mechanism by which copyright operated was relatively simple. The camera shone the image through a series of focus and correction of the optical lens onto a negative made of silver salt grains, which was recorded through the negative. In this case, the owner of the negative, or the subject acquired through purchase, is the natural owner of the copyright. In the days of film photography, ownership of photographic works was relatively

clear and easily identified. In the event of a dispute, a litigant who needed to claim ownership of a photographic work would only need to provide the court with the original negative of the work in order to have his or her ownership of the work confirmed and the claim upheld by the court, and the infringer would naturally pay the price for his or her infringement. However, in the internet era, the disappearance of negatives due to the full application of digital photography technology and the storage of all photographic works in the form of files on computers has resulted in a natural disadvantage for the right holder in terms of proof when claiming copyright over the photographic work.

3.1.2. The Proliferation of Violationss

In recent years, copyright infringement has become one of the most serious problems constraining the development of culture and the arts, and these infringements are not well identified due to the limitations of existing image search services, which continue to grow in number.

Copyright is one of the legal protections used to encourage creativity and is the exclusive right of a creator to use or allow others to use his or her content. Despite the various types of legal protection, piracy still occurs around the world. According to copytrack, around 65 million images are subject to copyright infringement each year in 115 countries worldwide, and the loss of stolen images is estimated at around $63 million. In the past five years, litigation alleging copyright infringement of digital images has exploded. Image piracy has become increasingly rampant due to the popularity of digital technology and the internet, which allows users to copy a photo with just the right click of a mouse. In the age of the Internet, the judiciary has also taken note of the problem, with the courts stating that "infringement of photographic works has become a widespread problem in the Internet age" and that such infringement is extremely harmful to freelance photographers. Despite this, many photographers do not file lawsuits when their photographs are infringed. This is because they lack the resources to sue, and they realise that even if they win their case they may only be paid a few hundred dollars, far less than their legal fees.

Domestically, the Beijing Internet Court, for example, received 64,000 cases from September 2018 to June 2020, of which 50,000, or 77%, were copyright infringement cases, with photographs accounting for more than half of all copyright infringement cases. It is important to note that litigation cases are not the entirety of infringement, and for various reasons, most infringements are not in fact sanctioned. In terms of the economics of law, these unpaid infringements in a sense also encourage more infringements to occur.

3.2. The Harm of "Copyright Troll"

3.2.1. Additional Financial Cost

For subjects using photography on the internet, the most common practice is to purchase it through commercial stock libraries, in addition to the free material available and to do the work themselves. Commercial galleries also adjust their

prices for different types of licenses, for example, images for self-published media such as WeChat are generally cheaper than outdoor advertising, magazine covers, and corporate campaigns. A search of the data reveals that currently domestic galleries mainly sell packages, with a few using monthly or annual subscriptions. When making a small number of image purchases, the price of a single photographic work is RMB40-200, and when buying in large quantities, you can obtain a price of around RMB40 per image. Due to the large number of statutory compensation systems used in copyright litigation for photographic works in China, if a copyright lawsuit is filed, the expected revenue that can be obtained from litigation for each photographic work is significantly more than RMB40, based on the minimum statutory compensation limit of RMB500, and the benefits brought by " copyright troll " in bulk litigation are even more substantial. According to a commercial gallery's 2019 financial report, revenue from product rights was $15,855,703.52, while operating costs were only $9,760,052.76. This means that the gallery could have earned $6 million from bulk litigation and related settlement actions alone.

On the other hand, the profit for the "copyright troll" is the loss to the defendants, as being sued by the "copyright troll" means financially at least $500 in statutory damages compared to the average purchase price of $40 per copy, and that's without hiring a lawyer. This figure would only be higher if the cost of hiring a lawyer were to be added.

3.2.2. Litigation Takes a Lot of Energy

Litigation not only means loss of money, it also means that the respondent has to expend a lot of energy in order to cope with the litigation. We all know that the vast majority of cases are not concluded on the same day. In order to deal with the lawsuit, the respondent either has to hire a lawyer to undertake the activity or participate in the lawsuit itself, which, given the length of time that such lawsuits generally take, does not yield any benefit in terms of time spent, the best outcome is that the "copyright cockroach" loses the case and the respondent does not have to pay any compensation, but does not gain any benefit from it. The best outcome is that the "copyright troll" loses the case and the defendant does not have to pay any compensation, but does not receive any benefit from it. As long as a lawsuit is brought by a "copyright troll", it will be a "losing proposition" for the respondent in any event.

3.2.3. Waste of Judicial Resources and Obstruction of Justice

Not only are "copyright troll" harmful to the specific subject of the lawsuit, but from a macro perspective, they are also harmful. According to some scholars, the vast majority (over 95%) of IPR infringement cases are settled using statutory damages due to the difficulty of calculating the actual damages suffered by the right holder and the unlawful benefit gained by the infringer, as well as extra-legal factors such as the excessive burden of trying the case (Zan, 2020). As there is a threshold for the application of the punitive damages system, when the in-

fringement does not meet the threshold set by the punitive damages system, some cases are determined by reference to the "existence of malice" on the part of the infringer, resulting in statutory damages becoming, to some extent, "punitive damages". This has led to statutory damages becoming "punitive damages" to some extent. As there is a lower limit to statutory damages, and according to the calculations above, such damages are generally much higher than the profits that could be made from a normal sale. This provides an incentive for "copyright troll" to bring more lawsuits, either to force settlements or to win, than the normal sale of images.

Another danger of "copyright troll" is that they are a huge drain on judicial resources. The easiest way to calculate the consumption of judicial resources is to look at the length of a case. According to statistics from the WK Advance big data platform, only 11% of cases were concluded on the same day, 37% within two weeks, 14.5% between two weeks and one month, 29% between one and three months, and about 8% for long process cases of more than three months. These large amounts of judicial activity are, in some ways, meaningless. These "trials" are in fact "sales" for the "copyright troll". The damages obtained are the commercial sales of the "copyright troll". This is tantamount to the "copyright troll" using public power and public resources to gain benefits for themselves, which are often significantly higher than the economic benefits of normal sales due to the existence of a statutory threshold for damages. Considering the amount of judicial resources consumed and the social effects that would not exist, it can be argued that the "copyright troll" are a waste of China's already strained judicial resources and have no positive impact on society. It has no positive impact on society. Justice should not and cannot become a tool for commercial operations.

4. The Litigation Logic and Operating Principle of "Copyright Troll"

To fundamentally understand the "copyright troll", we must first look at the logic and operation of "copyright troll" litigation, which involves filing a large number of lawsuits in order to force the defendant to settle at various stages of the litigation or to profit directly from winning the case. This article introduces the logic of the "copyright troll", using the United States and China as examples.

4.1. The Litigation Logic and Operating Principle of "Copyright Troll" in the United States

The US Copyright Act 1976 provides copyright owners with the option to choose between damages based on actual damages caused by the infringement and profits generated by the infringer, or the statutory damages rule, which is between $750 and $3000, up to a maximum of $150,000. In actual litigation, the amount ultimately determined by the statutory damages rule is often higher than the actual damages, which leads copyright owners to eagerly opt for the statutory damages rule. As a result of the statutory damages regime, plaintiffs have used

statutory damages to threaten defendants with prompt settlement for their benefit. In the Voltage pictures action, its claim for application of the statutory damages regime would have resulted in statutory damages of up to $150,000, significantly more than the average defendant could afford, but the purpose of its action was not to seek full compensation through trial, but to force the defendant to bear a claim of approximately $3000. In actual litigation, the amount ultimately determined by the statutory damages rule is often higher than the actual damages, which leads copyright owners to eagerly opt for the statutory damages rule. As a result of the statutory damages regime, plaintiffs have used statutory damages to threaten defendants with prompt settlement for their benefit. In the Voltage pictures action, its claim for application of the statutory damages regime would have resulted in statutory damages of up to $150,000, significantly more than the average defendant could afford, but the purpose of its action was not to seek full compensation through trial, but to force the defendant to bear a claim of approximately $3000.

In addition, the "copyright troll" uses different methods to reduce the cost of litigation. For example, a plaintiff such as Righthaven files a lawsuit using a fixed complaint template in which only the plaintiff's identity information is changed for each complaint. Another type, like voltage pictures, where only the IP address of the defendant is known but not its true identity, must first be litigated against the IP address in order to obtain a subpoena for the ISP to provide the true identity of the subscriber. This mode of litigation also has a simple way of identifying the alleged infringers, mainly by using a single complaint listing thousands of defendants, as voltage pictures has done. Initially, the copyright owner files a complaint naming each defendant as a "DOE", and once the specific identity of the infringer is discovered, the complaint is amended to identify the true party.

In a "copyright troll" lawsuit, the alleged infringer and the copyright owner are not on an equal footing in terms of bargaining power. The "copyright troll" can create an overwhelmingly strong incentive to settle with large statutory damages beyond the reach of the defendant. Charles Silver concludes that only about 3% of lawsuits are settled at trial, while 97% are settled out of court. Settlement is cheaper than litigation. This is one of the reasons why the "copyright troll" operate without litigation, or complete litigation, and "litigation" is simply a means of forcing their prey to settle. Samuel Cross and Kent Severud found that a representative lawsuit typically lasts nine days, while a similarly representative negotiation to resolve the same issue lasts only nine hours (Samuel & Kent, 1991). In the five years from 2007-2012, the Recording Industry Association of America sued around 35,000 people, of which only two went to trial. This figure means that a large number of defendants could have won their case and been spared damages, but chose to settle to avoid being dragged through a lengthy litigation process given the cost of litigation. For many, the prospect of large settlements, multiple trials and the resulting legal costs make settlements of a few thousand or even a few hundred dollars very attractive.

4.2. The Litigation Logic and Operating Principle of "Copyright Troll" in China

In contrast to the US "litigation-forced settlement" model, the "copyright troll" in China are more interested in litigation because the litigation system is different in China. Because of the extremely low costs of litigation in China, it seems that "copyright troll" is more keen to win from litigation than their American counterparts, even though they still use litigation to force settlements from defendants.

According to the statistics of photographic work dispute cases searched by WK Advance Big Data Platform, from the results of the adjudication, 77.63% of the plaintiff's claims were upheld in the first trial, 11.87% of the cases were upheld in the second trial, and 0.15% of the cases were upheld in the retrial. This means that, from the overall litigation process, the probability of the court supporting the plaintiff's claim is as high as 85%, and the probability of the defendant winning is less than 15%. Part of the strength of the "copyright troll" lawsuit lies in the very high success rate of the lawsuit, as long as the lawsuit is filed, there is a high chance of winning. In terms of the economics of law, then, as long as the expectation of success and the expected revenue from a successful lawsuit are higher than normal commercial sales, there will be subjects who choose to profit from litigation.

The proportion of plaintiffs also shows that legal persons and other organisations accounted for 75.07% of all plaintiffs, while natural persons accounted for only 24.86%. Some of the plaintiffs who filed a large number of copyright lawsuits for photographic works: Hanwha Eimage (Tianjin) Image Technology Co., Ltd. with 1230 cases, and Huagai Creative (Beijing) Image Technology Co. These two entities are the famous "copyright troll" Visual China and its controlled subsidiaries, which have been able to file a large number of lawsuits for copyright infringement of photographic works, even after many strikes, and have been able to reap the benefits of litigation.

And in terms of the level of court hearing, the Basic People's Court accounted for 67.36%, more than 2/3 of the cases, the Intermediate People's Court 22.93% and the Specialized IP Court only 6.42%, which should have something to do with the timing and location of the establishment of the Specialized IP Court, as evidenced by the specific figures. The largest number of cases of infringement of photographic works were heard by the Beijing Internet Court, with 4610 cases, while the Internet Court established in Guangzhou also had 933 cases, which is a good illustration of the networked nature of disputes over photographic works. In terms of total number, most disputes over copyright in photographic works occurred in Beijing and Guangdong, with Beijing leading the way with 30.47% or 11,038 cases, closely followed by Guangdong with 9986 cases with 27.57%, while the Beijing Intellectual Property Court received 1362 cases.

The online nature of photographic works can also be seen through the year of the case, with 16,972 lawsuits involving photographic works in the 17 years from 2001 to 2018, and a whopping 25,514 in the last five years, reaching 150% of the total number of cases in the last 17 years in just five years. On the one hand, this

is a result of the high level of development of the Internet, but on the other hand, it also illustrates the rampant "copyright troll". In the last three years, even with the impact of the epidemic and the fact that the state has started to take notice of the actions of the "copyright troll", the total number of cases still stands at 11,568, which is also an indication of the growth in the number of disputes over copyright in photographic works on the internet.

A search of the WK Advance big data platform shows that the "copyright troll" have a wide selection of defendants, ranging from Internet giants such as NetEase, Tencent and Sina to general companies, but overall, more than 75% of the defendants are legal persons and other organisations. This is firstly because legal entities and other organisations use more photographic works than individuals and, of course, more importantly because legal entities generally have a greater capacity to compensate than individuals. The ultimate goal of the "copyright troll" is not to defend their rights but to benefit from them, and by targeting legal entities and other organisations as their main targets, they are able to reap greater financial benefits.

5. Countermeasures and Legal Regulations of "Copyright Troll"

5.1. The Countermeasures of "Copyright Troll"

5.1.1. Non-Litigation Direction

The best way to combat the "copyright cockroach" is not to give it the opportunity to find a lawsuit. In other words, making sure that the images you use are not subject to copyright disputes and being aware of copyright. The first step is to establish awareness of copyright, except when using images that are not copyrighted, such as your own original or purely factual news. It is important to check the copyright on images before using them and, if necessary, to purchase them from the gallery or the original author. Also, when buying from a gallery or the original author, do your basic due diligence by asking the other party to provide proof that they are the copyright owner of the work.

5.1.2. Litigation Direction

At the stage of litigation, when the victim has been targeted by the "copyright troll", some common defences may help the victim:

1) Claims that the images (photographs) in issue do not original or not constitute a work.

In many cases, the plaintiff will provide the Court with a Certificate of Copyright Registration to prove that it has copyright in the picture. However, in reality, when the Copyright Office or the Copyright Registration Centre does the copyright registration, it only conducts a formal examination and not a substantive examination. Article 1 of the National Copyright Administration's "Trial Measures for Voluntary Registration of Works" provides that "These Measures are formulated to safeguard the legitimate rights and interests of authors or other copyright owners and users of works, to help resolve copyright disputes aris-

ing from copyright ownership, and to provide preliminary evidence for resolving copyright disputes." According to the provisions of the Measures, the registered work does not ipso facto meet the standard of originality referred to in the Copyright Act, nor does it indicate that the registrant is indeed the creator of the intellectual work. Therefore, the defendant may challenge the originality of the work, and the court will examine and judge the originality of the work substantively on a case-by-case basis.

2) Produce evidence to the contrary that the plaintiff is entitled to copyright.

The negatives, originals, legal publications, certificates of copyright registration, certificates issued by certification bodies, contracts for the acquisition of rights, etc., provided by the parties involved in the copyright may be used as evidence. A natural person, legal person or other organisation who signs his name on a work or product is deemed to be the owner of the copyright and the rights and interests relating to the copyright, unless there is proof to the contrary. For the documents produced by the plaintiff, such as the "Certificate of Copyright Registration", the "Results of the Work Copyright Registration Enquiry" and the "Agency Contract" signed with the author, if the defendant can produce evidence to the contrary that the plaintiff is entitled to copyright, the court will also examine the issue of whether the plaintiff is entitled to copyright.

3) The defendant claimed that the use of the work was "fair use".

The Copyright Law of China provides for twelve types of fair use in Article 22. Under these circumstances, a work may be used without the permission of the copyright owner and without payment of remuneration, provided that the name of the author and the title of the work are specified and that the other rights of the copyright owner under this Law are not infringed, such as using a published work of another person for personal study, research or appreciation, introducing or commenting on a work or illustrating an issue The use of published works of others for personal study, research or enjoyment, the use of published works of others for the purpose of introducing or commenting on a work or illustrating an issue, and the unavoidable reproduction or quotation of published works in newspapers, periodicals, radio stations, television stations and other media for the purpose of reporting current affairs. However, fair use is only a passive defence to copyright restrictions and there are very few cases where the defendant has been able to use the rule positively and won the case (Wu, 2005). Therefore, in a significant number of cases, the defendant does not fall into the category of "fair use".

4) Asserting that the plaintiff's copyright documents were defective.

Article 7(1) of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Civil Dispute Cases on Copyright provides that "the primers, originals, legal publications, copyright registration certificates, certificates issued by certification bodies and contracts for the acquisition of rights provided by the parties concerned may be used as evidence." Usually the plaintiff, as the platform of the photo library, will produce

the written authorisation or agency contract of the author of the pictures, and at the same time show the court the corresponding numbered pictures in the photo library. If the chain of documentary evidence of the proof of copyright produced by the plaintiff is defective, for example, the number of the pictures in the photo library and the number in the authorisation contract/agency contract do not match, and the plaintiff has no other strong evidence to prove that the legally authorised pictures and the pictures in the photo library If the plaintiff has no other evidence to prove that the legally licensed images correspond to the images in the gallery, the court may find that there is insufficient evidence to support the plaintiff's claim as a gallery platform.

5.2. The Legal Regulations of "Copyright Troll"

As the emergence of "copyright troll" is inconsistent with the legislative intent of copyright law and their use of judicial proceedings for profit is a great waste of judicial resources, they should be regulated at the legal level.

5.2.1. Adjustments should be Made to the Lower Limit of Statutory Compensation

First of all, the statutory compensation system, as a kind of principles of bridge, should not be excessively higher than the price of normal sales of pictures in the market during the same period. If the price of statutory compensation is much higher than the revenue obtained from normal sales of pictures, and after taking into account the probability of winning the lawsuit and a series of deductions such as the law firm's share, the plaintiff can still obtain the benefit of winning the lawsuit much higher than the revenue obtained from normal sales. From an economic point of view, then, this is an incentive for more people to file copyright lawsuits for photographic works in bulk.

Secondly, as a complementary system, the statutory damages system should not be abused. It is for the plaintiff to prove the damages caused by the defendant's tort and the benefit he or she can obtain, and the statutory damages system exists as a bottom-up system when neither side can reach a preponderance of the evidence. The adjudicator should first determine the amount of compensation by a careful trial. This will, of course, lead to an increase in the amount of judicial resources spent on individual cases, which will be reduced by the administrative and judicial bifurcation referred to below. By reducing the total number of cases, the quality of the individual cases is improved and the overall consumption of judicial resources is reduced.

In view of the possibility of alienation of the statutory compensation system in judicial practice, coupled with the fact that the newly amended Copyright Law has established a punitive compensation system, its general application may easily induce "copyright troll". Therefore, some scholars suggest that when applying statutory damages, "a distinction should be made between creators and non-creators who control the rights, between commercial platforms and groups of individuals who are accused of infringement, and between actual losses and

profits from infringement, whether they cannot be proved or do not want to be proved" (Cheng, 2021).

As many of the bulk actions brought by the "copyright troll" are unable to prove actual damages, when determining statutory damages, as long as the lower limit of statutory damages is less than the costs incurred, the plaintiff will need to consider the benefits that he or she can obtain if the damages cannot be proved. The plaintiff will need to consider the benefits that can be obtained in the event that he or she cannot prove his or her damages, and thus be more active in proving his or her damages and the benefits that can be obtained by the defendant.

Therefore, lowering the lower limit of the statutory damages so that they are not higher than the normal sales proceeds can effectively reduce the expected profit of the "copyright troll" and also make the plaintiff more active in proving the damages to better determine his damages and the defendant's profit, making the judicial trial more fair and precise.

5.2.2. Building a Reverse Punitive Damages System

1) Definition of reverse punitive damages system

Punitive damages are punishable by an award of damages in excess of the amount of the actual loss suffered by the plaintiff if the defendant has committed an infringing act against the plaintiff resulting in a diminution of the plaintiff's rights. According to the definition of punitive damages, "reverse punitive damages" means that where the plaintiff has expressly brought a malicious prosecution, the plaintiff is awarded damages against the defendant for the conduct of the plaintiff to cover the costs incurred by the defendant as a result of the proceedings.

2) Finding of malice against the plaintiff

In today's judicial practice, the statutory damages system has been abused and is used in a large number of cases. However, since the reverse indemnity system is awarded by the plaintiff to the defendant, it cannot be abused in the same way as statutory indemnity. The use of the reverse punitive indemnity system should be strictly limited to those who sue in bad faith, in order to prevent interference with the normal defence of rights. In other words, only those who are clearly established to have acted in bad faith should be punished accordingly. Therefore, the determination of malice must be made with the utmost care.

The determination of bad faith should focus primarily on whether the plaintiff owns the copyright in the work in respect of which the action is brought. Since the purpose of the litigation system is to settle disputes and the purpose of copyright litigation is to secure the legitimate rights and interests of the copyright owner through public authority, the initiator of copyright litigation must ensure that he or she has the appropriate rights to the work being litigated. If the initiator of a lawsuit is not sure whether he has the relevant rights, then he should not bring the lawsuit.

In the hearing before the court, it is found that it does not indeed have the

copyright in the work, and it cannot simply be concluded that it must have had bad faith. In such a case, a distinction should be made as to whether the work brought by the plaintiff was originally acquired or acquired by succession. In the case of original acquisition, as the plaintiff claims that the work belongs to its own original acquisition, and in fact the work is not filmed by the plaintiff, it can also be directly found that the plaintiff in the litigation there is bad faith. Successive acquisition cases, on the other hand, are relatively complex and require a careful examination of the source of the plaintiff's rights, and if the plaintiff is a fictitious source of rights, then malice may also be found. However, if the source of the plaintiff's rights is clear and specific, but because the source of rights fictitious proof of the relevant rights, in this case, because the plaintiff is not at fault, the plaintiff should not be considered to have bad faith, but only in accordance with the normal litigation procedures of the plaintiff to lose the case.

As a product of the development of the Internet, the "copyright troll" have wasted a large amount of valuable judicial resources by making excessive profits through "litigation instead of sales". Moreover, the "copyright troll" themselves do not produce intellectual results, and the benefits obtained from their lawsuits do not benefit the real intellectual results producers, and the massive amount of lawsuits filed by them is contrary to the fundamental purpose of copyright law to encourage innovation. Therefore, there is a need to regulate the mass litigation brought by "copyright troll" through various means, and by cracking down on "copyright troll", we can make copyright law work more healthily and better realise the incentive effect of the copyright system on innovation.

6. Summary

In this graphic-ridden Internet era, the creation, dissemination and protection of photographic works are important issues that cannot be avoided in the development of copyright law. The continuous development of the Internet has provided the public with great convenience in accessing various information and resources, and has also enabled more excellent photographic works to be disseminated more rapidly and widely, enhancing social welfare. Under the Internet environment, the application of intelligent technology has made photography creation a popular and normalized act, which brings not only the output and utilization of massive works, but also new challenges to the copyright protection of photographic works. Driven by various new technologies, the application scenarios of photographic works in the network environment are expanding, and the copyright protection of such works will be a long-standing issue of concern for all sectors.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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