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硕士研究生学位论文

题目：论网络环境中的著作权侵权与保护
(Copyright infringement and protection in network
environment)

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内容提要

网络出现的时间区区只有几十年,却迅速的飞入了千家万户,并且成为了人类不可或缺的一种生活方式,它通过一个虚拟的世界把每一台连入网的计算机都串联了起来,所有的网络用户都可以足不出户就在这里进行浏览信息、分享资源、学习研究、交流通讯等行为,网络在极大丰富了人们的生活的同时,也给将作品上传至网络空间的著作权人带来了一定的烦恼,虽然我国在《著作权法》中已经明确将作品的信息网络传播权写入了法条之中,但在这个复杂的网络环境中,还是难以避免的出现了大量的对著作权侵犯的行为,如果处理不好这个问题,会极大的打击著作权人的创作积极性,势必也会影响网络的繁荣发展,故网络环境中的著作权侵权行为的问题不容小视,应该得到全方位的保护。

据新闻报导,轰动一时的韩寒诉百度文库著作权侵权一案,法院在2012年9月17日已经做出了一审的判决,原告韩寒主张被告百度文库侵权,并且要求赔礼道歉,给予赔偿,并关闭百度文库。案情大意是这样:韩寒上传到百度文库的文章,百度文库并没有采取足够的反盗版措施,而且也没有阻止侵权文章的传播,导致韩寒对自己上传的三部作品的信息网络传播权受到侵犯,法院经过审理,部分的支持了原告韩寒的主张,认定百度文库没有尽到注意义务,存在主观过错,构成侵权,并且要赔偿原告三部作品的经济损失共计近十万元,对于赔礼道歉和关闭百度文库的主张,法院认为原告没有提供相应的证据,故不予支持。¹该案是网络环境中的著作权保护得到法院支持的最新案例,虽然法院并没有全部支持韩寒的主张,但从该判决中可以看出,法院已经认定被告百度文库构成了侵权,这就对所有的网络服务提供商敲响了一个警钟,如果在著作权人的提醒下都没有尽到必要的注意义务和采

1 http://news.ifeng.com/society/1/detail_2012_09/17/17677069_0.shtml, 2012年9月17日访问。

取相应的措施阻止网络中的侵权行为的发生,可能会因此侵犯著作权人的信息网络传播权,并且还要赔偿著作权人相应的损失,以后 ISP 会因为这个判决而更加小心谨慎自己所提供的服务,这对于网络环境中的著作权保护是一大促进因素。

之所以能想到写这篇文章,正是基于本人也属于痴迷的网络用户,在日常的使用网络的过程中,我会发现对于自己喜欢的文章或者评论、图片等内容,只要按一下“分享”,就可以被我转载到自己的空间里面去,以致于这个信息的来源到底是哪里、著作权人到底是谁,我自己都搞不清楚,甚至在想这个问题之前,完全没有意识到这个问题,但当我在构思这篇文章的时候,我才发现,原来网络中的著作权也同样非常重要,那么既然想了解这个问题,就应该首先知道这个问题是什么,然后分析这个问题,找到问题的根源所在,进而提出自己对这个问题的解决方案,才可以首先让自己明白这个问题的重要性、如何从自己的角度重视这个问题及为这个问题的解决提供一种参考意见。

本文分为四个部分,第一部分先介绍著作权的基本情况,包括了传统意义上的著作权的概念、特点、主客体、内容、权利限制,然后在此基础上比较了传统意义上的著作权与网络环境中的著作权的异同点,找到了网络环境中著作权的特殊之处;第二部分介绍的是网络环境中对著作权的保护的现状,重点讲述了我国的现状和世界知识产权组织、世界主要几个国家的保护现状,通过对我国和国外对网络环境中的不同保护措施,可以找到我国在保护中的不足及缺失,为最后一部分的具体建议奠定基础;第三部分讲解的是网络环境中的著作权侵权行为,主要包括:侵权行为的概念、特点、侵权原因、侵权形式、构成要件、主体、归责原则,详细了解了网络环境中的著作权侵权行为,以找到其不同于传统环境的特点,以便于采取相对应的措施来完善对著作权的保护;第四部分就是网络环境中对著作权保

护的具体建议,首当其冲的就是完善网络环境中对著作权保护的法律法规,笔者认为有必要建立一部专门规范网络环境的著作权的部门法,以更好的适应千变万幻的网络环境;第二点就是完善相应的技术措施,使侵权行为人在技术层面不是那么容易的接触到作品,以降低对网络环境中著作权侵犯的技术可能性;第三点建议是对网络环境中保护著作权的宣传,以使网络用户从心底里认识到自己平时无意的一个复制粘贴行为,可能就构成了对著作权人的不尊重,严重的还要承担相应的法律责任,毕竟解铃还需系铃人,外部的保护再周全都不如从源头上杜绝侵权行为的出现效率高,效果好,故政府的宣传行为也是不可或缺的一环;第四点是从著作权人自己的角度出发,其实不管是通过政府的监督或者是法院的救济,都显得很缓慢,侵权行为一旦出现就可能会在几秒钟将侵权数据传播到全球的各个角落,故著作权人可以尝试通过自己平时对网络的浏览来监督自己的作品有无侵权,当发现侵权行为时,可能及时与 ISP 沟通,要求其予以配合,封杀侵权数据或者将侵权数据下架等措施,以尽快的保护自己的权益不会被大规模的侵犯,这对于诉讼爆炸、动辄一两年的漫长诉讼来说,保护的力度就很及时了;第五点还是从政府的角度出发,要求政府加大对网络环境中保护著作权的执法力度,虽然我国已经在近几年对网络环境中著作权的保护力度一直在不断加大,每年都会展开为期几个月的打击侵权盗版的行动,还是几个部门联手组织,可见保护著作权的决心之重,笔者完全赞成这种政府行为,但可能在执法的过程中,没有更好的巧用力量,在侵权数据上传到网站之初就采取相应的技术手段予以屏蔽或者无法上传,导致出现侵权行为之后需要动用大量的人力、物力、财力去打击侵权行为,就有点不是那么很划算了,故笔者的建议是能建立一种盗版识别系统,以在源头阻止侵权数据在网络中的传播;最后一点是在救济方面,除了选择诉讼之外,还可以考虑仲裁这个解决途径,以

弥补诉讼的不足,尽快的解决纠纷。

关键词:著作权,侵权行为,保护现状,完善措施



Abstract

Network appears of time district only for decades years, is quickly of fly into has households, and became has human not or is of a lifestyle, it through a virtual of world to each Taiwan even network of computer are series has up, all of network user are can foot not out on in here for browse information, and share resources, and learning research, and Exchange communications, acts, network in great rich has people of life of while, also to will works upload to network space of copyright people brings has must of troubles, while my in Copyright method under in the has clear will works of information network spread right writes has method section among, but in this complex of network environment in the, also is difficult to avoid of appears has large of on copyright violations of behavior, if processing bad this problem, will great of combat copyright people of creation enthusiasm, is bound to also will effect network of prosperity development, so network environment in the of copyright infringement behavior of problem should not be small view, should get Omni-directional of protection.

According to press reports, a sensation of Han Han sued Baidu library copyright infringement case, September 17, 2012, the Court has made a judgment of first instance, Han Han, the plaintiff claims the defendant Baidu base tort, and calls for an apology, compensation, Baidu on and off base. Merits along the is so: Han cold Shang to Baidu base of articles, Baidu base and no take enough of anti-piracy measures, and also no block infringement articles of spread, led to Han cold on themselves upload of three Department works of information network spread right was violations, court after trial, part of support has plaintiffs Han Han of advocated, finds Baidu base no do attention obligations, exists subjective fault, constitute infringement, and to compensation plaintiffs three Department works of economic loss total near 100,000 yuan, Base for an apology and shut down Baidu's claim, the Court found that the plaintiffs did not provide appropriate evidence, is not supported. The case is network environment in the of copyright protection are court support of latest case, while Court and no all support Han cold of advocated, but we from the judgment in the can seen, Court has finds accused Baidu base constitute has infringement, this on on all of network service provides who sounded has a alarm, if in copyright people of reminded Xia are no do necessary of attention obligations and take corresponding of measures block network in the of infringement acts of occurred, may will therefore violations copyright people of information network spread right, And also to compensate copyright owners for the loss, ISP will in the future become more cautious of their services provided by the judgment, which for copyright protection in the network environment is a major contributing factor.

Been able to think of writing this article, I also belong to the obsession of the network users in the process of day-to-day use of the network, I will find It is based on the contents for your favorite articles or reviews, pictures, just click on "Share" can I reproduced to their own space inside, so that the source of this information is in the end is where the copyright owner who are confused myself, even in this problem, completely unaware of this problem before. But when I conceived the article, I

discovered that the copyright in the original network is also very important, and then wants to understand this problem, you should first know what the problem is, and then analyze the problem and find the root of the problem where, then put forward their own solutions to this problem can only be first to understand the importance of this issue, the attention to this problem and provide a solution to this problem suggestions from their own perspective.

This is divided into four parts, first part first describes copyright of basic situation, including has traditional meaning Shang of copyright of concept, and features, and main object, and content, and right limit, then this based Shang comparison has traditional meaning Shang of copyright and network environment in the of copyright of similarities and differences points, found has network environment in the copyright of special of Department; second part describes of is network environment in the on copyright of protection of status, focus told has my of status and World Intellectual Property Organization, and world main several national of protection status, Through on my and abroad on network environment in the of different protection measures, can found my in protection in the of insufficient and the missing, for last part of specific recommended lay based; third part explained of is network environment in the of copyright infringement acts, main including: infringement acts of concept, and features, and infringement causes, and infringement forms, and constitute elements, and main, and owned accountability principles, detailed understanding has network environment in the of copyright infringement acts, to found its different Yu traditional environment of features, Easy to take corresponding measures to improve the protection of copyright; IV part is network environment in the on copyright protection of specific recommended, brunt of is perfect network environment in the on copyright protection of legal regulations, I believes that has necessary established a department specialized specification network environment of copyright of sector law, to better of adaptation thousand variable million magic of network environment; 2nd is perfect corresponding of technology measures, makes infringement acts people in technology level not then easy of contact to works, to reduced on network environment in the copyright violations of technology possibilities; 3rd recommended is on network environment in the protection copyright of publicity, to makes network user from heart in awareness to themselves usually has no intention of of a copy paste acts, may on constitute has on copyright people of not respect, serious of also to assumed corresponding of legal responsibility, after all solutions Bell also needed Department Bell people, external of protection again comprehensive are than from source Shang stop infringement acts of appears efficiency high, effect good, so Government of publicity acts is indispensable of a ring; 4th is from copyright people themselves of angle departure, actually regardless of is through Government of oversight or is Court of relief, are is is slow, infringement acts once appears on May will in several seconds will infringement data spread to global of all corner, so copyright people can tries to through themselves usually on network of browse to oversight themselves of works has no infringement, dang found infringement acts Shi, may timely and ISP communication, requirements its be tie, ban infringement data or will infringement data Xia frame, measures, To as

soon as possible of protection themselves of interests does not is mass of violations, this for litigation explosion, and frequently one or two years of long litigation,, protection of efforts on is timely has; 5th also is from Government of angle departure, requirements Government increased on network environment in the protection copyright of law enforcement efforts, while my has in in recent years on network environment in the copyright of protection efforts has been in constantly increased, annually are will expand for several months of against infringement piracy of action, also is several sector hands organization, Visible protection copyright of determined to of heavy, I full in favour of this Government acts, but may in law enforcement of process in the, no better of specially with forces, in infringement data Shang to website of early on take corresponding of technology means be shield or cannot upload, led to appears infringement acts zhihou needs spent large of human, and material, and financial to against infringement acts, on somewhat not then is deal has, so I of recommended is can established a piracy recognition system, to in source block infringement data in network in the of spread; Last but not least in terms of relief, in addition to selected outside of litigation, arbitration can also be considered the solution to compensate for insufficient action, resolve the dispute as soon as possible.

Keywords: copyright, infringement, protection and improvement measures.



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