

Online Copyright Liability On Cinematographic Works View

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cases

- Zhangzeyu V. Beijing movie studio
- The first movie copyright case in 1983, Haidian district court, Beijing
- An important judgement that confirm the right of authorship is an inalienable civil right belongs to author

cases

- China Recordings V. Shangdong TV Station
- 1998, Beijing
- The first case about satellite broadcasting

cases

- Huayi Brothers V Guangxian Times
- 2005, Beijing
- The first case on movie dissemination through internet
- The typical communication way that the movie is upload in server of the website who provide movies downloading

Cases

- Central TV information V. Dopod Mobil
- 2004, Beijing
- Cable broadcasting, dissemination through internet, mobile network

cases

- Xinchuang Online V Tudou Web
- 2007, Shanghai
- The first case about liability of video share providers (UGC)
- Streaming videos

Cases

- Chenggong media V. Shiyue net
- 2008, Beijing
- Intime streaming

Cases characters

- More cases from 2007 to 2008
- Most defendants are videos share websites or UGC websites
- Movie copyright holders or their agents sue websites, almost every website with reputation involved copyright disputes

Cases characters

- Dissemination way: download , streaming or intime streaming ,
- Commercial way: provide p2p software or platform, UGC platform, video search, video linking

Cases characters

- Information network: internet, LAN, net bar, lptv , iptv internet and telecom (cellphone)
- Video works : movie, TV play, MTV, recordings, UGC video, other videos
- Works form: flash, mp4 or other digital form

Challenges

New ways of dissemination through information network

- Different service of hosting ,searching or linking
- Difficulty to find Infringer
- Balance between copyright protection and technology development

Solutions

- Direct and indirect copyright liability
- Direct
- Act as article 10 of the copyright law
(12) the right of information network dissemination, that is, the right to provide the public with works by wired or wireless means, so as to make the public able to respectively obtain the works at the individually selected time and place;

Solutions

- Indirect
- Assist, promote, facilitate or benefit from the infringement

Copyright law article 47 (6) without the permission from the copyright owner or obligee related to the copyright, intentionally avoiding or destroying the technical measures taken by the obligee on his works, sound recordings or video recordings, etc. to protect the copyright or the rights related to the copyright, except where otherwise provided in laws or administrative regulations;

Solutions

- Principles and Doctrines for Secondary liability
 - EU : indirect liability or secondary liability,
 - US : contributory liability, vicarious liability ,inducement liability’.
 - China: joint tort liability
 - Common fault
 - Common with the result
 - The judicial interpretation on issues related to network

Solutions

Duty of care

Civil law relief like injunction

Duty of information disclosure

Article 52 of copyright law: Where a publisher or producer of reproductions is unable to prove the lawful authorization of his publication or production, or the distributor of the reproductions or the lessor of the reproductions of a cinematographic work or a work created in a way similar to cinematography, computer software, sound recordings or video recordings is unable to prove the lawful sources of his distribution or lease of the reproductions, he shall bear the legal liabilities.

copyright law

- The legal framework of online liability
- Solutions for direct liability: Interpretation of “dissemination through network” in case
- Network
- Broadcast ,network dissemination and performance, other communication to the public
- Time and place

Solutions

- The legal framework for the liability of online intermediaries
- Hosting
- *Ordinance: Article 22 Where a network service provider provides information memory space to its service objects, or provides the works, performance and audio-visual products to the general public through the information network and in case the following requirements are satisfied, he is not required to assume the liabilities of compensation:*
 - (1) Clearly indicating that the information memory space is provided to the service objects and publicizing the name, contact person and web address of the network service provider;*
 - (2) Having not altered the works, performance and audio-visual products that are provided to the service objects;*
 - (3) Having no knowledge of and being justifiable reason to know the infringement of the works, performance and audio-visual products;*
 - (4) Having not obtained any economic benefit from the provision of the works, performance and audio-visual products to its service objects; and*
 - (5) After receiving a notice from the owner, deleting those works, performance and audio-visual products that the owner regards as infringing ones according to the present Ordinance.*

Solutions

- Search or link
- *Article 23 Where a network service provider provides any searching or linking service to its service objects or cuts off the link to any infringing work, performance, or audio-visual product after receiving a notice from the right owner according to the provisions of the present Ordinance, it is not required to assume the liabilities of compensation. However, when anyone is fully aware or should have known that any of the works, performance or audio-visual product it has linked to constitutes any infringement, it shall be subject to the liabilities of joint infringement.*

Solutions

- The conditions for exemption
- Knowing, actual knowledgement
- Direct benefit
- Delete or take measures
- search or link as a location tools

Thank you!