

# Discuss on the Distinguishing Standard of Serial Images and Their Copyright Protection

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**Abstract**—Under the provisions of China's current copyright law, audiovisual works and video recordings as two separate objects with different degrees of protection. This article attempts to explain the ambiguity of the criteria for distinguishing the audiovisual works and video recordings in judicial practice and proposes the following solutions: when distinguishing audiovisual works and video recordings by the presence or absence of originality, serial images that faithfully record existing images should be excluded, and according to the dichotomy of image and content, the three links of visualization of process events, raw image shooting and editing production should be refined in the judgment criteria. Since it is difficult to make direct distinctions within audiovisual works, this paper converts them into distinctions of producers according to the different situations of claimants as an aid.

**Index Terms**—Audiovisual works, cinematographic and TV serial works, originality, producer, video recordings

## I. INTRODUCTION

The third revision to China's Copyright Law has been completed, changing the name of **cinematographic works to which are assimilated works expressed by a process analogous to cinematography** to **audiovisual work**, and retaining the provisions on video recordings. Such legislative provisions have led to a series of discussions.

For the sake of argument, this paper refers to "film work," "cinematographic work" and other synonymous expressions as "**audiovisual work**" [1]. Meanwhile, there is a broader concept of audiovisual fixation in international treaties when considering that certain forms of expression consisting of serial images do not possess some elements of audiovisual works and become other objects. According to the definition of the Beijing Treaty on Audiovisual Performances [2], **audiovisual fixation** means "the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device." Therefore, audiovisual works and video recordings are different from other right objects in nature, and they are **serial images** with or without accompanying sound.

The constitutive elements and essential features of audiovisual works and video recordings, as well as the distinction between them, are not only related to the basic

copyright theoretical issues such as how to understand the originality of audiovisual works, but also involve the attribution of their rights and the judgment of infringement, thus profoundly affecting the subsequent utilization and dissemination of audiovisual works as important properties in the era of knowledge economy.

## II. THE SCOPE OF PROTECTION FOR SERIAL IMAGES IN COPYRIGHT LAW

In the field of private law [3], while the law protects certain rights and interests of the right holder, it means that the obligation not to hinder or actively promote the exercise of rights is imposed on the obligor with equal legal status. As far as copyright law is concerned, this competition between interests and non-interests is always reflected in the collision between private rights and public interests.

The copyright law precisely takes the concept of defining the object of rights as the starting point, controls the scope of protection of private rights, balances the relationship between the rights and interests of copyright owners and the public interests of society, and ultimately realizes the legislative purpose of promoting the creation and dissemination of works.

### A. Basic Elements to Be Met

A work protected by copyright law has at least three basic constituent elements [4]: first, that the work is limited to the **expression** of the author's ideas and does not extend to the ideas themselves, which are already in the public domain and freely used by people; second, that the work must have the substantive element of **originality**, namely, that the expression of the work is done independently and with creativity that reflects the author's individual choice and arrangement; and third, that the work should have the formal element of "**reproducibility**," or "**fixability**," which is necessary for a work manifested in various manners to be observed and perceived.

For the above basic constituent elements, audiovisual works raise the following questions: If someone does not reproduce the serial images of an audiovisual work, but rearranges, shoots and edits the substance contained therein, can the provisions of copyright law on audiovisual works give the original producer a legal basis to claim infringement by the latter? How to strengthen the understanding of the abstract standard of originality and whether there is really something special in the judgment of originality of audiovisual works? How to understand the element of fixation of audiovisual works, does it refer to the state of having been fixed, or does it have the possibility of being fixed? The answers to these questions will affect the scope of protection of audiovisual works.

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### *B. Other Conditions for Protected Serial Images*

In the relevant diplomatic conference that resulted in the Stockholm Act of the Berne Convention [5], it was proposed that “For the purpose of this Convention, works expressed by a process producing **visual effects** analogous to those of cinematography shall be considered to be cinematographic works, on condition that those works are **fixed on some material support.**”

On the one hand, with the advancement of communication technology, regardless of the production process of the serial images, those “assimilated works expressed by a process analogous to cinematography” that appear on television and other audiovisual fields have expanded the scope of protection of the serial images at a practical level because their **visual effect** is similar to that of traditional cinematographic works. Generally speaking, the visual effect refers to the **impression of motion** during the successive shows, which is related to the duration of vision or other similar scientific explanations. Although it mainly refers to visual effects, more precisely, it covers both sound and visual effects.

On the other hand, regarding the serial images formed by **live broadcast** of sports events, whether the serial images were already fixed at the time of the infringement will also affect the scope of protection of the serial images [6]. If a third party simulcasts a live broadcast without permission, because the serial images are not recorded in advance and not yet fixed on some material support, for some countries that have fixed as a condition for the protection of audiovisual works, this misconduct concerned can hardly be considered as an infringement of the audiovisual work, but requires the protection of an object such as broadcasts that are separately provided [7].

Since the actual situation varies greatly from country to country, Article 2(2) of the Berne Convention also states that the countries of the Union shall have the right to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form [8]. But international treaties are designed to set **minimum standards** of protection, which means that countries are, naturally, entitled to freely interpret the specific legal connotations of fixation and whether or not to protect an unfixed serial image.

### III. THE SIGNIFICANCE OF THE DISTINCTION BETWEEN SERIAL IMAGES IN COPYRIGHT LAW

Law is the combination of reason and force, and the premise of freely criticizing the legislation is strictly obeying the existing provisions. In the provisions of China's current copyright law, a distinction is made not only between serial images as audiovisual works and video recordings, but also within audiovisual works. Accordingly, this article mainly discusses the significance of distinguishing serial images into different objects and the meaning of dividing the types of audiovisual works at the level of practical sense rather than theoretical value.

### *A. The Differentiation between Audiovisual Works and Video Recordings*

**Video recording**, namely, any original recording with or without accompanying sound in the form of serial images except audiovisual works [9], shall be protected by neighboring rights in China. The legislator holds that, although the video recording does not have originality, but its producer through electromagnetic, laser and other scientific and technological means, the existing works will be recorded in image or audio-visual form on a material medium in the process of putting considerable financial and material resources, there is a need to extend the protection. At the same time, if no regulation of unauthorized reproduction of video recordings, not only will violate the legitimate rights and interests of video producers, and ultimately will affect consumers.

Hence, the differentiation between audiovisual works and video recordings has become a problem. If the level of protection of both is basically the same in China's copyright law, the theoretical significance will be greater than the practical significance. In Germany [10], which also adopts the dichotomous legislative model of serial images, the protection of motion pictures is basically covered by the relevant provisions for cinematographic works and thus in practice there are not as many disputes as in China. The necessity of the distinction lies in the fact that **the level of protection** between audiovisual works and video recordings in China differs largely in terms of the scope of rights, the duration of protection and the exercise of rights in the narrow sense of copyright and neighboring rights.

#### *1) Different scope of rights*

Video producers are entitled to fewer exclusive rights than producers of audiovisual works, and the scope of control of certain exclusive rights varies. In the dispute-ridden karaoke infringement case, the core controversy is the identification of the music TV in question. If carefully analyzed, the result is that China's copyright law does not provide the video producer with **the right of public performance**, which suggests that the karaoke operator does not have to obtain permission from the video producer or pay him/her for playing the video recording containing the musical work. In the case of musical television serials constituting audiovisual works, the operator is responsible for obtaining a permission and paying a fee from the relevant collective management organization for the performance of musical work and audiovisual work.

#### *2) Differing protection times*

Works or objects of neighboring rights that exceed the protection period will enter the public domain and be freely available for public access without further permission or payment. Although the copyright law protects both for a period of fifty years, the rules for the starting time differ. Normally, the first publication is later than the completion of the first production. Meanwhile, the general provision of "during the author's lifetime and fifty years after his death" applies to works in audiovisual works that can be used individually if the author is a natural person. In other words, the protection of video recordings is no longer than that of audiovisual works.

### *3) Varying exercise of rights*

The protection of the copyright law for video recordings is limited to the existing recordings, and cannot extend to the works and performances contained in the video recordings. For the purpose of guaranteeing that the rights and interests of copyright owners and performers will not be less protected owing to the increase of dissemination methods and links of works, in accordance with the provisions of Articles 44 and 48 of the Copyright Law [11], when a video producer authorizes others to reproduce, distribute, rent or disseminate video recordings through the Internet, the licensee shall still obtain the permission of the relevant copyright owner or performer and pay the remuneration as stipulated or agreed. When a performer has authorized a video producer to make the first recording of his performance, the relevant video recording is a legal product, and the TV station broadcasting the video recording only requires to obtain permission from the video producer and the copyright owner of the performed work and pay the remuneration.

#### *B. The Distinguishing Significance of Audiovisual Works*

Article 17 of the China Copyright Law distinguishes audiovisual works into film and TV series works and other audiovisual works [11], with the former copyright legally attributed to the producer (before the amendment, called producer, that is, the subject involved in investing in films and TV series) [12], and the latter given priority by agreement, and attributed to the producer only when there is no agreement or the agreement is unclear. The aim of the legal term producer as stipulated in the Copyright Law is to clarify the ownership of audiovisual works, thus promoting the utilization and protection of them. More accurately, an initial point of departure for dividing the types of audiovisual works is to distinguish the **original attribution** of copyright, because regardless of the type of audiovisual works, their actual final attribution of copyright is still to be determined by the relevant contract.

#### *1) Legal effect of the legal attribution of rights*

China has not stipulated that the transfer and exclusive license of copyright shall be registered to be effective or to have effect against third parties. In the field of private law, copyright owners are at liberty to deal with their property rights as long as there are no other special provisions. Meanwhile, based on the intangible nature of the work, the parties only need to reach an agreement on the modification of the right and sign a written contract in accordance with the implementation regulations [9], without the necessity of additional delivery, and the effective of the contract means the acquisition of the right.

According to the different parties involved in the agreement on copyright ownership, the agreement on ownership of audiovisual works can be classified into three cases: the agreement between producers, the agreement between producers and authors participating in the creation of audiovisual works, and the agreement between producers and transferee other than authors, but no matter what the cases are, when the agreement on ownership is the true intention of both parties and does not violate the mandatory provisions of laws and administrative regulations, it will **not**

**be defective in validity** just for being different from the provisions on statutory ownership.

The legal effect of statutory attribution is embodied in the application of **the presumption of right attribution**, which will affect the transaction cost and security of audiovisual works. Article 12 of the Copyright Law provides for the general provision that the author is presumed by the attribution and the author is presumed to be the copyright owner [11]. The natural person who is the author, and the legal or unincorporated organization that is treated as the author, possess the original copyright. The provisions of this paragraph also apply to works in audiovisual works that can be used individually. For the original ownership of the whole images of film and TV series works, the copyright law attributed to the producer is a special clause, which takes precedence over the general clause of presumption of attribution and applies. But in practice in the film and television industry, to satisfy the commercial requirements of attracting investment, legal terms and industry terms are often blended, and it is not easy to determine the copyright owner from the many titles in the opening and closing credits of audiovisual works, which ultimately have to be decided by combining the ownership information of words such as "all rights reserved" and the production or filming company signed in the opening and closing credits [13].

When determining the original copyright owner of other audiovisual works, the special provisions of statutory attribution do not apply. It is still necessary to make a comprehensive judgment based on Article 12 of the Copyright Law and relevant judicial interpretations, combined with the original manuscript of the base script of the audiovisual work, the ownership information uploaded in the legal publication, the notary certificate issued by the notary institution on the ownership of the work, and the copyright registration certificate, etc. Also, regarding the identification of the successor right holder, whether it is a movie, TV series work or other audiovisual works, it should be proved by taking into account the relevant authorization contract.

#### *2) The reality demand of audiovisual industry development*

Under normal circumstances, traditional film and television works are adapted from original written works and jointly created by screenwriters, directors, cinematographers, editors, and other parties based on a consensus, which are special derivative works and joint works [14]. Traditional TV dramas are hard and costly to produce, and their revenue often depends on the scope of dissemination of the work, so if the rights are scattered among various authors, that will inevitably lead to the unfavorable situation of poor communication and mutual constraints among the authors, which will obviously increase the cost of utilizing and distributing the work, and fall into the tragedy of the anti-commons of wasting resources [15].

From the international conventions and the laws of representative countries, the core element of "**producer**" is the organizational action of distribution and **financial responsibility**, the latter is the transformation of the investment issue [16]. In order to promote the creation and dissemination of audiovisual works, China draws lessons

from international practice of granting property rights to the producer who organizes the production and assumes responsibility for it. The practice of the past 30 years has proved that the effect is good. Nowadays, traditional TV dramas still show strong vigor and the role of producers in the process of production and dissemination of works should not be underestimated, therefore, it is necessary to continue to attribute the copyright of movies and TV series works to such producers.

Nevertheless, in commercial practice, the copyright of a considerable number and form of new created audiovisual works is not attributed to the producer. Or rather, there is ambiguity in the identification of producers in these new types of works, and the status and role of producers in different kinds of works vary greatly. With the rapid development of new technologies represented by digitization and networking, short videos with easy production and low cost have entered people's lives, and the creators of such audiovisual works are usually the authors of these works. From the perspective of realistic needs, it is not necessary to set up another personnel to organize the production and responsibility, at this point it is not appropriate to apply the rules of statutory attribution.

Compared with the above-mentioned audiovisual works, the attribution of rights to **video games** shows more complicated possibilities. For some games including ordinary competitive games, the developers have already stored the images and screen combinations containing various kinds of works in the material library, and the serial images triggered by the operation of game players are only the original achievements of mobilizing the existing material library, for which the developers are entitled to copyright. As for games similar to those that provide creative tools or can directly change the game program, and so on to give players sufficient room for creativity, the necessity of attributing copyright to the producer indiscriminately is indeed open to argument. In the face of such a complex situation, it is actually not unreasonable to respect the agreement of the parties.

#### IV. INTERPRETATION OF EXISTING DIFFERENTIATION STANDARDS FOR SERIAL IMAGES

##### *A. Misinterpretation and Ambiguity: The Criterion of Originality in Serial Images*

###### *1) The core disagreement on the originality standard is wrong*

According to common theory, the presence or absence of **originality** is the fundamental criterion that distinguishes audiovisual works from video recordings. Some scholars have also pointed out that the subject of neighboring rights lacks the authorial creativity of the work, but is merely a legal fiction that is still maintained due to the force of history and expediency [17]. The term "work with originality" generally refers to a work that is independently completed by the author and reflects the author's individual choice, selection, judgment and arrangement. According to past judicial practice, the determination of movies and TV series as works is basically uncontroversial. Mechanical recordings of other individuals' performances and teaching

lectures belong to video recordings, which are also not much of a problem. However, the determination of the copyright of video games, short videos, sports events, etc., situated between "with or without" originality is the area of greatest disagreement. As a result, scholars have heatedly discussed whether video products should be kept or not, and whether originality is "high to low" or "yes or no".

Whether or not video recordings are included in the protection of audiovisual works, the originality of serial images must be judged. The abolition of video recordings seems to bring originality back to the determination of "presence or absence," but in essence, it should be reverted to the quantitative judgment of "high or low," that is to say, what threshold of originality is reached before it is considered to be original. Prof. Wang Qian has said that it is not unreasonable to put aside the basic principles of copyright law and the relevant legislative system in China to abstractly discuss the meaning of originality, whether one agrees with the "yes or no" theory or the "high or low" theory, which is meaningless [18].

Since audiovisual works and video recordings are essentially similar, why should they be artificially distinguished, thereby increasing the space for judges to make value judgments and thus affecting the internal stability of copyright law? Even if the legislator considers that the right holder has put in creative labor in filming and producing audiovisual works, while only technical ones in making video recordings, why does the legislator only distinguish between serial images, but not the photographic works composed of still images according to the "presence or absence" of originality? If the vague determination of the definition of a work makes an original serial images to be protected as a video recording without originality, the protection offered to the right holder will be somewhat weakened in terms of the scope of the right, the exercise of right and the time of protection according to China's legislation. Will this promote the creation and dissemination of works, or just be the opposite?

The reason for the above problem is that the difficulty of determining originality compared to other categories of works makes the distinction between serial images inadvertently raise the originality requirement for audiovisual works, even if this is not the intention of the legislator. Therefore, the core disagreement on the standard of originality of serial images should be formulated as whether the copyright law should require higher originality for audiovisual works than for other works. If we traced back to the root, we should be more concerned with how exactly the originality of audiovisual works should be judged.

###### *2) The distinction between existing images and existing works is unclear*

The retrial judgment in the "Phoenix Net Event Broadcasting Case" [19], which focused on the determination of the copyright of serial images of live broadcast sports events, has pointed out that video recordings in the sense of copyright law are limited to reproduction and mechanical recording of serial images, namely, mechanical and faithful recording of existing works or other serial related images.

Video recordings are usually reproductions of existing works or performances that are mechanically processed by telecommunications equipment, allowing people to perceive the content of the work or performance in its entirety in audio-visual form. In other words, the recording process does not reflect the individual choice and arrangement of the expression of the work. The retrial court used the word "or" to connect the existing works with other serial images, which seems to mean that the video recording can faithfully record both the existing works and the existing images.

According to the definition in Article 5 of the Implementing Regulations of the Copyright Law [9], a **video producer** refers only to the **initial** producer of a video product. After obtaining the permission of the right holder and paying remuneration, the video producer converts the existing work or performance into a video product, often by making a master tape first and then making a batch copy. Hence, the video producer in the sense of copyright law usually refers to the producer of the master tape. If the serial images already exist, it means that there is already a producer who fixes the serial images on the tangible medium, and the faithful recording at this point only involves the transformation of the material support, which is essentially a copy of the existing serial images from plane to plane, and the recorder certainly cannot obtain the protection of copyright law by virtue of the copies alone. For this reason, a clear distinction should be made between existing works and existing images, and the faithful recording of existing images should be excluded from the scope of protection of video recordings.

#### *B. Divergence and Transformation: Criteria for Distinguishing Audiovisual Works*

##### *1) Films and TV series works are difficult to distinguish directly from other audiovisual works*

The creation process and reality of film and TV series works are different from other audiovisual works, and the distinction between the two meets the realistic needs of the development of the audiovisual industry. The genuine question is how to find a criterion for the distinction that is universally applicable and not in conflict with jurisprudence.

Judging from the provisions of the existing legislation, the definition of films in Article 2 of the Film Industry Promotion Law is not fundamentally different from the definition of film works in the implementing regulations, except for the details added for the convenience of censorship and management by the relevant administrative organs [21]. Under Article 2 of the film regulations [22], the scope of application is stipulated by way of enumeration, and this clause is not universally applicable.

From the perspective of relevant industry practices, the terms used in contracts are usually not strictly defined legal terms, and since the law is second nature, it would be hazardous to rashly provide for differentiation criteria when the relevant industry ecology is not yet mature.

Considering the constituent elements of the distinguishing criteria, it is much harder to be identified as a unified distinguishing criterion for a single element, such as duration, presence or absence of plot, with or without filming license, creation purpose, and dissemination

platform [23]. Traditional audiovisual works such as movies and TV dramas are usually dissimilar to micro-short videos in respect of duration, investment scale and number of participants, but audiovisual works such as video games and Spring Festival gala are not lacking in difficulty of production and high investment. It can be seen, if the comprehensive elements as a reference, left to judges particular case specific analysis, still has a great possibility of elements set more difficult, the actual effect is not satisfactory.

On this basis, I believe that it is not easy to make a direct distinction between movie and TV series works and other audiovisual works, so in order to ensure the safety of transactions in audiovisual works, the distinction needs to be transformed to some extent.

##### *2) Transforming into a distinction between producers is feasible*

In the first two paragraphs of Article 17 of the Copyright Law [11], the term "producer" is adopted uniformly, and the same term has different connotations in the process of legislative evolution. As a legal concept, the producer in the first paragraph actually refers to them in the traditional film and television industry, but there are no supporting administrative regulations and judicial interpretations to clarify its connotation. Combined with the judicial practice [24], the **producer** generally refers to the legal person who invests in the creation of movies and TV dramas, obtains approval from the competent authorities, and undertakes the market risk and legal responsibility of the works, which is usually a film and TV company in practice.

The shooting and production of a TV drama is time and labor intensive, from purchasing the copyright, determining the creator, to the operation of the project and distribution require producers such as film studios or companies to organize and provide material conditions in a unified manner. At the same time, the producer, with its entire corporate property, is liable for civil, administrative or even criminal liability for violations of the agreement or legal provisions. It is clearly stated in Article 15 of the Regulations on Film Management that film production units shall legally possess the copyright for the films they produce [22].

The correct approach to legal interpretation should not only strictly respect the legislative text and build on the system of legal norms, but also conform to the legislative purpose and adapt to the real needs. Ensuring the safety of transactions is the primary goal of the legislative policy on audiovisual works. In essence, copyright law distinguishes audiovisual works in order to stipulate different rules for the attribution of rights. Compared with the mature traditional film and television industry, there are multiple possibilities for producers of novel audiovisual works, and disputes over the attribution of their rights are more likely to occur in the course of their rights transactions.

In order to ensure the safety of the transaction of audiovisual works and promote the creation and dissemination of audiovisual works, on the one hand, the judicial interpretation should stipulate the elements of the identification of producers of movies and TV series works to provide clear guidelines for adjudication; on the other hand,

it should distinguish the different situations of producers in other audiovisual works in judicial practice and summarize them.

## V. THE SOLUTION OF SERIAL IMAGES DISTINCTION AND PROTECTION

Distinction is the basic premise of protection, and protection is the ultimate purpose of distinction. Copyright law protects expressions with originality, but there is a lack of clearer and more feasible reference standards in practice for judging the originality of serial images specifically, which affects the stability and unity within the law. Meanwhile, disputes arising from different provisions on the ownership of audiovisual works can be divided into those over the original attribution of rights, and those between copyright owners and third parties and the public. For the former, the author distinguishes the different situations of identifying the producer. For the latter, a solution is proposed at the levels of judicial remedy and industry practice respectively.

### A. Exploration of Distinguishing Criteria

#### 1) Refine the originality judgment of serial images

According to the dichotomy thinking of image and content [25], the protection of copyright law for both audiovisual works and video products is limited to the serial images themselves, and cannot cover the contents contained in the images. That is, the judgment of originality of image and content are independent of each other. Just as in photographic works composed of still pictures, the author's unique contribution is to collect objective facts and express them in the form of language or visual images [26], the fact that the photographed object has originality does not mean that the picture itself also has originality [27]. The analysis of the originality of audiovisual works composed of serial images is also based on **the whole of the images** rather than the elements of the works [28].

In practice, the production process of a series of images is normally divided into three dimensions: the selection of material before shooting, the filming and the editing after filming, to determine whether there is an individual choice and arrangement that is independently conceived and reflects the expression level of the work. Unlike still pictures that record static facts, serial pictures present or express process events. The characters, props, scenes and other constituent elements of the process are mostly objective things in nature and belong to unprotected facts, while the selection and arrangement of each material based on a certain theme is most likely to belong to the realm of ideas. Therefore, the use of material selection to emphasize the originality of serial images before filming is less accurate than the term **visualization of process events** [25].

The serial images can be at least classified into documentary and non-documentary images, distinguished by whether or not there was an existing process event before the shooting. The originality of serial images is most evident in the visualization of process events. **Non-documentary images** are usually first organized by the producer, and the process of arranging the factual elements, structuring the

overall process, and adjusting the rendering effects, in order to visualize the process event from the objective reality and realize the visualization before filming. In this process, the personality of the producer is obviously involved, precisely because of the producer's individual choice and arrangement (when the producer is a legal person, his personality is reflected in the natural person with whom he has a specific connection and completes the specific filming activity), so that the serial images cross the field of thought and provide the fundamental basis for transformation into expression fixed on a certain medium. If someone restores the process event itself without permission, but does not directly utilize the serial picture, in the absence of defenses such as limited expression, the copyright holder's right to reproduce or adapt may be infringed because of the substantial similarity of the final presentation of the serial picture.

Whether the process event itself is original or not has no impact on the judgment of originality of the documentary-type screen [13]. However, exactly because documentary images record existing process events, when individualized arrangements are not reflected in the visualization process, their originality is often highlighted through image filming and post-production. In the **process of shooting** serial images, producers usually use a variety of technical means and creative techniques to fix the images. Two points need to be paid attention to here: Firstly, the filming technology itself does not constitute originality, and the judgment of originality needs to examine the effects of serial images embodied by the filming technology, such as the transformation of scenes caused by camera switching and the shift of focus caused by camera focusing. Secondly, the requirement of originality in copyright law is different from the demand of inventiveness in patent law, as long as there is room for free creation and uniqueness of expression in serial images, the originality cannot be denied just because of the use of relatively more common filming techniques [19]. As for the **post-production process**, the producer uses montage techniques to connect the images from different camera positions and shooting angles, and to select, process, and edit the fixed images, thus reflecting originality in the editing and production process. As in the case of filming, the production process must be applied to a serial image in order to reflect originality, and the novelty of the production method is not a necessary condition to determine whether it constitutes a work.

Therefore, a mere technical recording of an existing work or performance does not have any individual judgment and arrangement in terms of visualization of process events, filming and post-production, so it is not original. Although the length of the micro video is short, it is possible that the producer created the visualization of process events, used camera switching to change the serial images during filming, and selected and processed the images during production, thus making the serial images constitute a work.

#### 2) Distinguish between different situations identified by the producer

According to Article 17 of the Copyright Law [11], the rights of films and TV series are legally attributed to the producers, while other audiovisual works are attributed to the producers only if no agreement is made or it is unclear.

According to the above analysis, the producers of traditional film and television dramas are usually film studios or companies. After decades of development in the film and television industry, disputes arising from the ownership of original rights are not common. Here, we will focus on the identification of producers in other audiovisual works such as music television, video games and micro short videos, with a view to providing the courts with concrete and feasible analysis ideas.

In disputes over the ownership of original copyrights of other audiovisual works, if the claimants are **two and more natural persons**, the producer shall be identified as the author who performed the intellectual creation, excluding the non-creator who conducted the auxiliary work. Where the claimants have all created and made original contributions to the audiovisual work, consideration shall be given to whether the audiovisual work in question constitutes a joint work. If so, the rights of the undivided work shall be jointly enjoyed by the co-authors in accordance with the provisions of Article 14 of the Copyright Law [11], and if the work can be used separately, the copyright shall be enjoyed separately for each part.

Works of legal entities reflect the will of legal persons, and the actual creators basically have no room for independent creation, but audiovisual works have more space for individualized selection and arrangement, thus basically will not constitute works of legal entities. Therefore, if the claimant of the right **involves a legal person or an unincorporated organization**, the court shall first consider whether the audiovisual work in question is a work for hire, examine the job relationship between the natural person claiming the right and the legal person or unincorporated organization and the agreement between them on the attribution of the right to the audiovisual work. If there is an agreement according to its terms, and if there is no agreement or it is unclear, the producer shall still be identified by case. According to Article 18 of the Copyright Law [11], when the audiovisual work in question is an ordinary work for hire, the copyright shall be enjoyed by the author; if it is a special work for hire, other rights shall be enjoyed by the legal person or unincorporated organization, except for the right of authorship, which shall be vested in the author.

When the claimants are **all legal or unincorporated organizations**, it is more complicated to identify the producers. The court should actively promote the parties to negotiate on the attribution of rights, and refer to the identification of producers of movies and TV series in past judicial practice, examine the actual role of the claimants in the production and preparation process of audiovisual works, and identify the legal or unincorporated organizations that organize the production and bear the risks and responsibilities as the producers with rights.

### *B. The Deepening of Supplementary Protection*

#### *1) Protection of the reasonable trust interests of third parties*

The commercial value of audiovisual works such as movies and TV dramas is not only reflected in the traditional forms of cinema and TV station broadcasting, but also the

deep integration of telecommunication networks, radio and TV networks and the Internet, which tends to interoperate and share audiovisual resources. In this context, unified authorization of works by copyright owners for dissemination through different channels and reasonable allocation of time can fully guarantee the maximization of revenue and thus promote the creation and dissemination of audiovisual works. Therefore, the importance of reducing transaction costs and securing transactions is self-explanatory.

However, due to the existence of various situations of producers and the fact that the copyright law adopts a voluntary registration system for contracts of property rights transfer and exclusive license (unlike patents and trademarks, works are automatically protected once they have been created. At present, the copyright registration agency in China is the National Copyright Protection Center.) In this case, there is a certain uncertainty in the appearance of the rights attributed. At this point, if the relevant contract is not clear about the right attribution and boundaries, it will further increase the conflict of rights in the process of commercialization and exploitation of audiovisual works, which will cause constant disputes among the copyright owner, the real successor right holder and the third party (in this case, other assignees and licensees).

By virtue of the contract with the copyright owner, the successor right holder can acquire the agreed rights without separate registration or delivery. Once the relevant rights have been transferred, the original copyright owner then grants authorization, which is actually a disposition without right, and the third party certainly cannot obtain the corresponding rights. The question is, if it is difficult for the third party to find out the true status of the right attribution, should its reliance interest be protected, and if so, how should it be protected?

In my opinion, the implementation of **the principle of public trust** must be based on the premise that the public right relationship is basically consistent with the actual one, otherwise it will not be able to form the corresponding social certainty. Although each of them has only presumptive effect, they have strong credibility when they are mutually corroborated. To protect the security of audiovisual works, the National Copyright Administration of China also regularly publishes an early warning list of works protection, disclosing the rights holders of important audiovisual works, and the authorization of right of communication through information network. Once the ownership of the two rights is inconsistent, the third party has the duty of care to verify with the two rights holders. If there is consistent, it is the court's necessity to protect the **reasonable reliance interests of the third party** and, depending on the specific circumstances, find that the third party is not at fault and does not bear the civil liability for damages. The court is also supposed to support the relevant parties to negotiate on the scope of rights exercise to promote the maximum utilization of audiovisual resources.

#### *2) Establish a smooth work authorization channel*

Disputes between traditional film, television works and short videos, also known as "the dispute over the rights of

short and long videos," have been concentrated in recent years. The different provisions of copyright law on the attribution of rights may further affect this state of affairs. In conclusion, while judicial remedies are important, the relevant industries should respond more actively.

The rights holders of audiovisual works do not blindly reject the creation and dissemination of short videos, instead, they want to achieve a win-win situation with the power of short videos under the premise of safeguarding their legitimate rights and interests. According to relevant practices at home and abroad, short video platforms can take up the important task of communicating between audiovisual rights holders and short video creators, which makes authorization more convenient and standardized on the one hand, and promotes the dissemination of audiovisual works, on the other hand, it can also effectively avoid film and television infringement on video platforms and facilitate the legalization of secondary creation.

#### CONFLICT OF INTEREST

The author declares no conflict of interest.

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