SPP Guiding Case No. 193: Case of Liang Yongping, Wang Zhenghang, and Thirteen Others for Copyright Infringement

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Keywords

Intellectual property protection; crime of copyright infringement; dissemination through information networks; application of the "safe harbor" rule; substantive similarity; tiered and classified handling.

Holding

In handling criminal cases of online copyright infringement, the conditions for applying the "safe harbor" rule shall be accurately understood and grasped, and whether a defense of innocence is established shall be determined by examining whether the network service provider knowingly knew of the infringement. Where the number of infringing audiovisual works involved is relatively large, whether the works constitute substantive similarity may be comprehensively determined through sample appraisal by an appraisal institution, combined with the rights holder's identification opinions. For online intellectual property cases with a large number of persons involved, tiered and classified handling shall be carried out in accordance with the criminal policy of combining leniency with severity, based on factors such as the status, role, degree of participation and subjective culpability of the persons involved.

Basic Facts

Defendant Liang Yongping, male, actual controller of Wuhan Kuaiyixing Technology Co., Ltd.

The basic particulars of the other 14 defendants such as defendant Wang Zhenghang are omitted.

Beginning in 2018, Liang Yongping successively established Wuhan Lianshijie Technology Co., Ltd. and Wuhan Kuaiyixing Technology Co., Ltd., and directed Wang Zhenghang to recruit Wan Mengjun and others to develop and operate the "Renren Yingshi Subtitle Group" website and its Android, iOS, TV and other clients. Liang Yongping also recruited Xie Minghong and others to organize translators to download unauthorized audiovisual works from overseas websites, translate, produce and upload them to the relevant servers, and provide users with online viewing and download services through the "Renren Yingshi Subtitle Group" website and related clients operated by him. Upon appraisal and audit, there were 32,824 unauthorized audiovisual works on the "Renren Yingshi Subtitle Group" website and related clients, with a total of over 6.83 million members. To seek illegal gains, Liang Yongping arranged for Xie Wenxiang to be responsible for advertising solicitation for the website and clients, and arranged for Cong Junkai to be responsible for selling mobile hard drives copied with unauthorized audiovisual works on the website. From January 2018 to January 2021, the total amount of illegal business operations reached over RMB 12 million, including over RMB 2.7 million in membership fees, over RMB 8.8 million in advertising fees, and over RMB 1 million in profits from the sale of hard drives.

Procuratorial Performance

Arrest review and guidance on evidence collection. On September 8, 2020, the Shanghai public security organs filed and investigated the "Renren Yingshi Subtitle Group" copyright infringement case. Given the significant social impact of this case, the Shanghai Municipal Public Security Bureau filed and investigated the principal offender Liang Yongping, while the other co-suspects were filed and investigated by the Hongkou Branch of the Public Security Bureau (hereinafter the Hongkou Branch). On January 29, 2021, the

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People's Procuratorate of Hongkou District, Shanghai (hereinafter the Hongkou Procuratorate) approved the arrest of 12 suspects including Wang Zhenghang. On February 1 of the same year, the Third Branch of the Shanghai Municipal People's Procuratorate (hereinafter the Shanghai Third Branch) approved the arrest of suspect Liang Yongping.

Following the suggestions of the procuratorial organs, the public security organs focused on the following investigation and evidence collection work after executing the arrests: First, they studied and judged the organizational structure of the units involved, the nature of the conduct of the persons involved and the division of work, and captured the important members of the gang; for non-core personnel such as translators and proofreaders with a low degree of participation, evidence was collected in the capacity of witnesses. Second, they collected evidence on whether the audiovisual works involved were substantively similar to the rights holders' works. Given that the suspects mainly committed the crime by completely copying the works, the method of sample appraisal by an appraisal institution was adopted, combined with the rights holders' identification opinions, to comprehensively determine whether the audiovisual works involved and the rights holders' works constituted substantive similarity. The Copyright Appraisal Committee of the China Copyright Protection Center randomly selected 50 films from all the films for substantive similarity appraisal. At the same time, comprehensively considering the source of ownership, content category and website section distribution of the works involved, the works involved were stratified for sampling, and 800 films of various types such as movies, TV series and documentaries were extracted, with the relevant rights holders carrying out identification by viewing them one by one and comparing screenshots. Both the appraisal and identification results were substantive similarity. The results were notified to the suspects in the case such as Liang Yongping in accordance with the law, and all the suspects acknowledged the aforesaid evidence collection methods and results. Third, they ascertained the amount of illegal business operations, the number of infringing works and the number of members of the website involved. The public security organs counted 52,683 films seized on the servers of the "Renren Yingshi Subtitle Group", and, after removing duplicate films, public-welfare films and films beyond the 50-year copyright term, obtained a total of 32,824 infringing films. They also audited the membership fees, advertising fees and income from the sale of hard drives copied with unauthorized audiovisual works collected by the website, as well as the number of members, obtaining a total amount of illegal business operations of over RMB 12 million and over 6.83 million members.

Review for prosecution. In accordance with the jurisdiction provisions for intellectual property cases in Shanghai, on July 5, 2021, the Shanghai Municipal Public Security Bureau transferred Liang Yongping to the Shanghai Third Branch for review and prosecution, and the Hongkou Branch transferred the other 14 suspects to the Hongkou Procuratorate for review and prosecution. The procuratorial organs focused on the following work: First, accurately determining the criminal circumstances and social harm. After review and confirmation of the amount of illegal business operations and the number of members, it was determined that this case fell within the circumstances of "having other especially serious circumstances". Second, promptly changing the compulsory measures. In the review and prosecution stage, after the criminal facts were basically ascertained, the Hongkou Procuratorate comprehensively considered the status and role of each suspect in the joint crime, the circumstances of returning illegal gains, and the signing of plea leniency agreements, and changed the compulsory measures for 14 suspects with relatively minor criminal circumstances such as Wang Zhenghang to release on bail pending trial. On August 20, 2021, the Shanghai Third Branch initiated public prosecution against defendant Liang Yongping with the Shanghai No. 3 Intermediate People's Court for the crime of copyright infringement, and the Hongkou Procuratorate initiated public prosecution against defendant Wang Zhenghang and 13 others with the People's Court of Yangpu District, Shanghai (the court with centralized jurisdiction over intellectual property cases) for the crime of copyright infringement.

Accusation and proof of crime. On November 22, 2021, the Shanghai No. 3 Intermediate People's Court and the People's Court of Yangpu District, Shanghai respectively held hearings on the two cases. During the trial,

Liang Yongping's defender raised that: first, a large number of works on the website involved were uploaded by users, and the defendant had fulfilled the "notice-and-takedown" obligation, so the "safe harbor" rule applied and it should not be found to be infringement; second, the method of accepting users' "donations" on the website should not be found as the amount of illegal business operations. The public prosecutor responded: First, apart from some works uploaded by users, a large number of the infringing works on the website involved were uploaded by co-offenders such as Xie Minghong; Liang Yongping knowingly knew that there were a large number of infringing works on the website, still directed the co-offenders to upload them, and allowed users to continue uploading infringing works without taking effective measures to curb the dissemination of infringing works, so his "safe harbor" rule defense was not established. Second, defendant Liang Yongping published an Alipay "donation" QR code on the website involved. After members "donated", they could obtain member rights such as online viewing, exemption from part or all of the advertisements, and different numbers of on-demand views. This was a common profit model for film and television websites, whose essence was to collect membership fees in the name of "donations" and provide audiovisual services for a fee.

Handling result. On November 22, 2021, the Shanghai No. 3 Intermediate People's Court sentenced defendant Liang Yongping to fixed-term imprisonment of 3 years and 6 months and a fine of RMB 1.5 million for the crime of copyright infringement; the People's Court of Yangpu District, Shanghai sentenced defendant Wang Zhenghang and 13 other accessories to fixed-term imprisonment ranging from 1 year and 6 months to 3 years, with suspended sentences, and fines ranging from RMB 40,000 to RMB 350,000 for the crime of copyright infringement. After the first-instance judgments, none of the 15 defendants appealed.

Guiding Significance

(1) Accurately grasp the conditions for applying the "safe harbor" rule, and determine whether a defense of innocence is established by examining factors such as the source of the infringing works and whether the network service provider knowingly knew of the infringement. The "safe harbor" rule generally refers to the situation where, after a rights holder discovers that a network user has used network services to infringe its lawful rights and interests and notifies the network service provider, the network service provider takes necessary measures in a timely manner and does not bear infringement liability. In judicial practice, some network service providers rely on this rule to claim that they had no subjective intent to infringe copyright, and further raise a defense of non-criminality. In this regard, procuratorial organs shall accurately grasp the conditions for applying the "safe harbor" rule, and focus on reviewing and determining whether the defense of innocence is established from two aspects: First, examine the source of the infringing works. Where a network service provider organizes the uploading of infringing works, this is a direct act of infringing the right to disseminate through information networks, and the "safe harbor" rule does not apply. Second, where network users upload infringing works, examine whether the network service provider knowingly knew of the infringement. Where there is evidence proving that the network service provider subjectively knowingly knew that the works were infringing yet still allowed network users to upload them, or did not take necessary measures, it shall be determined that there was subjective intent, and the defense of innocence is not established.

(2) Where the number of infringing audiovisual works involved is relatively large, whether the works constitute substantive similarity may be comprehensively determined through sample appraisal by an appraisal institution, combined with the rights holder's identification opinions. Based on the creative characteristics of audiovisual works, it is relatively difficult for infringers to adapt them on a large scale, and, in order to cater to user needs, they generally adopt the means of completely copying the works. When handling cases of infringement of audiovisual work copyright involving a large number of works, procuratorial organs may have an appraisal institution extract a certain proportion of the works for substantive similarity appraisal, and at the same time organize identification by the rights holders. In specific operations, the works involved may be divided as a whole into multiple non-overlapping categories according to certain standards,

such as the characteristics, types, sources and methods of commission of the audiovisual works, and then randomly sampled within each category. On this basis, the sampling method, appraisal and identification methods and identification opinions shall be notified to the suspects in the case, and their opinions shall be heard. Upon review, where the identification opinions meet the statutory requirements, they may be used as evidence.

(3) For online intellectual property infringement crimes with a large number of persons involved, tiered and classified handling of the persons involved shall be carried out in accordance with the criminal policy of combining leniency with severity. In recent years, cases of intellectual property infringement through information networks have shown characteristics of organization and chain-based operation, with fine division of labor and complex personnel structures. When handling online copyright infringement cases with a large number of persons involved, procuratorial organs shall strictly implement the criminal policy of combining leniency with severity, and carry out differentiated, tiered and classified handling based on factors such as the status, role, degree of participation and subjective culpability of the persons involved in the joint crime. For those who initiate the criminal intent, dominate the distribution of benefits, organize and manage the platform, or play a principal role in the joint crime, they shall be the focus of crackdown and pursued strictly; for other persons involved who have a low degree of participation in the joint crime and commit the crime as employees, they may be determined as accessories and handled leniently as appropriate; for temporarily recruited personnel with weak joint criminal intent, minor circumstances and minor harm, comprehensive consideration of the effectiveness of handling may lead to non-pursuit of criminal liability.

Relevant Legal Provisions

Article 217 of the Criminal Law of the People's Republic of China (as amended in 1997).

Article 1195 and Article 1197 of the Civil Code of the People's Republic of China (effective 2021).

Article 5(2)(1) and Article 11 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Specific Application of Law in Handling Criminal Cases of Intellectual Property Infringement (effective 2004).

Article 1 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Specific Application of Law in Handling Criminal Cases of Intellectual Property Infringement (II) (effective 2007).

Article 2 and Article 10 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Specific Application of Law in Handling Criminal Cases of Intellectual Property Infringement (III) (effective 2020).

Article 3 of the Opinions on Several Issues Concerning the Application of Law in Handling Criminal Cases of Intellectual Property Infringement (implemented 2011).

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