SPP Guiding Case No. 100: Chen Li and Seven Others (Infringement of Copyright)

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Supreme People's Procuratorate Guiding Case No. 100 (Procuratorial Example No. 100)

Released among the Twenty-Sixth Batch of Guiding Cases of the Supreme People's Procuratorate

Keywords

Network infringement of copyright in audiovisual works — use without the permission of the copyright owner — guiding the investigation — electronic data.

Holding

In handling criminal cases of network infringement of copyright in audiovisual works, the procuratorial organ shall promptly extract, fix, and preserve the relevant electronic data, and conduct a comprehensive review of the electronic data against the requirements of objectivity, legality, and relevance. In cases involving a large number of works, when determining "use without the permission of the copyright owner," the review shall focus on whether the reproductions involved were illegally published, reproduced, or distributed, and on whether the defendant is able to produce evidentiary materials showing that the permission of the copyright owner was obtained.

Basic Facts

Defendant Chen Li, male, born in 1984, was sentenced on November 10, 2014 by the High-tech Industrial Development Zone People's Court of Hefei, Anhui Province to fixed-term imprisonment of seven months and a fine of RMB 150,000 for the crime of infringing copyright, and was released after completing his sentence on December 25, 2014.

The basic particulars of the other seven defendants, including Lin Yin, are omitted.

From July 2017 to March 2019, defendant Chen Li, entrusted by overseas persons, successively recruited defendants Lin Yin, Lai Dong, Yan Jie, Yang Xiaoming, Huang Yasheng, Wu Bingfeng, and Wu Jianxing, formed a QQ chat group, and updated and maintained multiple pirated film and television resource websites such as "www.zuikzy.com." Among them, Chen Li was responsible for assigning tasks and paying remuneration to the other members of the group; Lin Yin was responsible for recruiting part of the personnel, training and supervising the other members in completing their work tasks, and tallying workload; and Lai Dong, Yan Jie, Yang Xiaoming, and others obtained film sources by downloading from legitimate websites and sharing through cloud drives, sliced and transcoded them through cloud transcoding servers, added advertisements and watermarks of gambling websites, generated links, and finally copied and pasted those links onto the aforesaid pirated film and television resource websites. During this period, Chen Li received a total of over RMB 12.5 million in operating fees for the pirated film and television resource websites remitted by overseas persons, and the defendants profited in amounts ranging from RMB 500,000 to over RMB 18,000.

After the case arose, the public security organ fixed and preserved from the aforesaid pirated film and television websites a large number of infringing film and television works that the defendants, including Chen Li, had reproduced and uploaded, including the 2019 Spring Festival season films "The Wandering Earth," "Integrity," and "Crazy Alien."

Judgment

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Review for arrest. During the 2019 Spring Festival, eight Spring Festival season films, including "The Wandering Earth," were collectively pirated in high definition during their theatrical run, and the pirated films entered the internet through various channels. The Third Branch of the Shanghai Municipal People's Procuratorate (the "Shanghai Third Branch") intervened in the investigation at the invitation of the public security organ and guided the public security organ in evidence collection and preservation. First, by retrieving and restoring the QQ group chat records and combining them with the statements made by the defendants after their arrest, the Shanghai Third Branch ascertained that the Chen Li group constituted a joint crime and determined each defendant's subjective awareness of the jointly conducted operation of the pirated film and television resource websites. Second, it contacted the collective copyright administration organizations of countries such as the United States, Japan, and South Korea, where the infringing works were relatively concentrated, to have them issue copyright certification documents for the works involved. On April 8, 2019, the public security organ requested the arrest of the eight defendants in the Chen Li group, and the Shanghai Third Branch lawfully approved the arrest.

Review for prosecution. On August 29, 2019, the Shanghai Municipal Public Security Bureau transferred the case to the Shanghai Third Branch for prosecution on the charge that the defendants, including Chen Li, had committed the crime of infringing copyright. The large number of film and television works involved in this case covered various types such as films, television dramas, variety shows, and animation, and the relevant copyright owners were located both domestically and abroad. There were difficulties in collecting and reviewing evidence of whether permission from the rights holders had been obtained. To further strengthen the evidentiary foundation, the procuratorial organ required the public security organ to promptly obtain from the National Radio and Television Administration the list of institutions holding a "License for Network Dissemination of Audiovisual Programs," in order to prove that the websites operated by defendant Chen Li were all websites that illegally provided online audiovisual services. At the same time, it required the public security organ to extract 2,425 works from the relatively fixed sections of United States, Japanese, and Korean dramas on the multiple websites established by Chen Li, on the balanced principle of downloading 300 works from each website, and to entrust a relevant copyright certification institution to issue ownership certification, confirming that the sampled works were all infringing works used without the permission of the copyright owner, and that Chen Li and the other website operators had no evidentiary materials showing any permission from a copyright owner. On the basis that the facts were clear and the evidence was conclusive and sufficient, the eight defendants, witnessed by their defense lawyers or duty lawyers, all voluntarily pleaded guilty and accepted punishment, accepted the determinate sentencing recommendations proposed by the procuratorial organ of fixed-term imprisonment ranging from ten months to four years and six months and fines ranging from RMB 20,000 to RMB 500,000, and signed written recognizances of guilty pleas and acceptance of punishment.

On September 27, 2019, the Shanghai Third Branch initiated a public prosecution in the Shanghai Third Intermediate People's Court (the "Shanghai Third Intermediate Court") against the eight defendants, including Chen Li, for constituting the crime of infringing copyright.

Charge and proof of the crime. On November 15, 2019, the Shanghai Third Intermediate Court held a pretrial conference, at which the procuratorial organ and the defense reached consensus on matters such as the manner of evidence presentation, the appearance of expert witnesses, and the exclusion of illegally obtained evidence, and clarified the differences existing in the facts, evidence, and application of law of the case. On November 20 of the same year, the case was publicly tried in accordance with law. The eight defendants and their defense lawyers had no objection to the charges, but each raised their own defense opinions on the calculation of the amount of illegal business operations. Chen Li's defense lawyer argued that the cost of renting servers and the wages paid to the defendants should be deducted, while other defense lawyers argued that the amount of illegal business operations should be calculated according to the remuneration actually received by each defendant. In addition, the defense lawyers in this case all argued that the arrest of the overseas persons would have an impact on the defendants, and that probation should be applied to the

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defendants. The prosecutor replied as follows: First, where copyright is infringed through the operation of a pirated resource website, the proceeds from operating the website constitute the amount of illegal business operations, and expenditures such as renting servers and paying remuneration to the defendants are costs of the crime and shall not be deducted. The prosecutorial organ determined the starting time of each defendant's participation in the crime according to the time each defendant joined the QQ group and received the first payment of remuneration, and calculated the amount of illegal business operations that each defendant should bear in combination with the overall operation of the website during the corresponding period; the evidence was conclusive and sufficient. Second, the evidence in the case already fully proved that the defendants committed a joint crime and their respective roles therein; according to the relevant laws and judicial interpretations, whether the overseas persons were arrested does not affect the sentencing of the defendants. Third, the sentencing recommendations in this case were comprehensively determined on the basis of the defendants' criminal facts, evidence, statutory and discretionary circumstances, social harm, and other factors, and had been recognized by the defendants through their written recognizances; moreover, the number of infringing works in this case was large, the scope of dissemination was wide, and the period of operation was long, constituting especially serious circumstances, and defendant Chen Li committed another crime punishable by fixed-term imprisonment or more within five years of completing his sentence, constituting a recidivist, and therefore probation should not be applied. The collegial panel adopted the prosecutorial opinions and sentencing recommendations.

Disposition. On November 20, 2019, the Shanghai Third Intermediate Court rendered a first-instance judgment, sentencing the eight defendants, including Chen Li, to fixed-term imprisonment ranging from ten months to four years and six months and fines ranging from RMB 20,000 to RMB 50,000 respectively for the crime of infringing copyright. After the judgment was pronounced, none of the defendants appealed, and the judgment became effective.

Reasoning

(1) Fully performing the procuratorial function, punishing in accordance with law the crime of network infringement of copyright in audiovisual works, and genuinely safeguarding the legitimate rights and interests of rights holders. Protecting copyright in accordance with law is an important part of the national intellectual property strategy. The procuratorial organ resolutely punishes the crime of infringing copyright in accordance with law, with particular attention to punishing such crimes committed in the online information environment. The crime of infringing copyright in audiovisual works in the online environment is characterized by increasingly concealed means, strict organizational division of labor, a wide geographical span, and evidence that is easily damaged and concealed, and it shows an increasingly frequent and widespread trend, seriously undermining cybersecurity and order and therefore meriting severe punishment. To accurately charge and prove the crime, when intervening in the investigation and guiding evidence collection in a timely manner, the procuratorial organ shall pay attention to the following aspects: first, extracting, fixing, and preserving the video links of the websites involved, the video files to which the links point, the catalogs of film and television works on the websites involved, and the video playback interfaces of the websites involved; second, fixing and preserving the backend of the cloud transcoding servers corresponding to the websites involved and the video links in that backend; third, comparing and determining whether the links formed in the cloud transcoding backend and the video links played on the websites involved are identical; and fourth, with respect to the multiple versions of pirated films involved in the criminal process, technically conducting identity comparisons of the works separately for the opening, middle, and ending sections.

(2) In handling cases of network copyright infringement, the procuratorial organ shall conduct a comprehensive review of the objectivity, legality, and relevance of electronic data, apply in accordance with law the system of leniency for guilty pleas and acceptance of punishment, and improve the quality and efficiency of case handling. The crime of copyright infringement in the online environment presents the characteristics of being cross-border, cross-regional, intelligent, and industrialized, and the evidence is

mostly manifested as electronic data that are difficult to obtain. When handling such cases, on the one hand, it is necessary to focus on conducting a comprehensive review of the objectivity, legality, and relevance of electronic data, to distinguish different categories of electronic data and adopt targeted review methods, to pay particular attention to reviewing the multiple correlations between the electronic data and the facts of the case, and to comprehensively use the electronic data together with other evidence to accurately determine the facts of the case. On the other hand, in the face of the complexity of cybercrime, the procuratorial organ shall pay attention to combining the status and role of the different defendants and make full use of the system of leniency for guilty pleas and acceptance of punishment to promote the ascertainment of facts such as the means of the crime, the division of labor among accomplices, the relationships among persons, and the distribution of illegal gains, thereby improving the efficiency of case handling.

(3) Accurately grasping the method of proving "use without the permission of the copyright owner." In cases involving many types of works and dispersed rights holders, when determining "use without the permission of the copyright owner," a comprehensive judgment shall be made by focusing on whether the reproductions involved were illegally published, reproduced, and distributed, and whether the defendant is able to provide evidentiary materials showing that permission from the copyright owner was obtained. To prove that the websites involved were websites that illegally provided online audiovisual services, evidence such as the list of institutions holding a "License for Network Dissemination of Audiovisual Programs" may be collected to reinforce the proof that the reproductions involved were illegally published, reproduced, and distributed. When the number of infringing works involved is large, sampling may be used to collect evidence, but attention shall be paid to reviewing factors affecting the objectivity of the sampling, such as whether the samples extracted are representative, whether the scope of sampling is consistent with the other evidence in the case, and whether the sampling is random. On the basis that the number of infringements reaches the standard for prosecution, the sampled works shall be submitted to the copyright owner for ownership certification to confirm whether the works involved are all infringing works.

Relevant Legal Provisions

Article 217 of the Criminal Law of the People's Republic of China

Article 10 of the Copyright Law of the People's Republic of China

Article 15 of the Criminal Procedure Law of the People's Republic of China

Article 3 of the Regulations on the Administration of Audiovisual Products

Article 5 of the Measures for the Security Protection and Administration of International Networking of Computer Information Networks

Articles 5 and 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 Infringement of Intellectual Property Rights

Articles 11 and 15 of the Opinions of the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security on Several Issues Concerning the Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights

Article 252 of the Criminal Procedure Rules of the People's Procuratorate

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