



Protection of Animation Industry under Intellectual Property

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Abstract: This paper targets the weak legal consciousness of obligees and the imperfect phenomenon of legislation and industrial chain in the process of the rapid development of the animation industry in China. Through looking up references, the author reckons that governance needs to be carried out upon the animation industry through national legislation and publicity as well as the establishment of a third-party supervision and management platform.

Keywords: animation industry chain, legal consciousness, the third-party supervision and management platform

1. Introduction

With the growth of China's economy and culture, the animation industry has gradually begun to proceed. As a part of our culture, the animation industry has also entered the development stage from the initial stage. However, it still lags behind such countries with the developed animation industry as the United States and Japan.^[1] Over the past few years, China has strongly supported the animation industry and issued a series of related support policies. It has contributed to the continuous development and progress of the entire animation industry.^[2] Behind the development, however, there is a series of unfair and illegal infringement, such as the infringement in the trademark of animation, patents, copyright, and so forth. The aforesaid illegal infringement makes the development of animation industry in China has been in a morbid state. Therefore, while developing and perfecting the animation industry, much importance is supposed to be attached to the protection of intellectual property and the awareness of protecting their legitimate rights and interests. In the meantime, it is necessary to severely crack down on illegal and criminal acts. This is not only of great significance to the protection of intellectual property rights, but also to the development of animation industry.

2. Concept of Animation and Development Achievements

Having been developed rapidly, China's animation industry has made great progress in all aspects over the past few years, and the whole industry has shown a vigorous development state.

2.1 Concept

The animation industry refers to the creation, production, publication, broadcasting, performance, the sale of direct animation products as well as the production and operation of clothing, toys, video games and other side-line products related to animation images, such as cartoons, comic books, newspapers, films, television, audio-visual products, the living theatre, and new varieties of animation based on modern information dissemination technology.^[3] It takes "creativity" as the core and animation and comics as the main forms of expression. Having a broad development prospect, the animation industry is called "the emerging sunrise industry".^[1]

2.2 State of development

The Chinese animation industry started early. Beginning in the 1950s and 1960s, the ink animation produced in

this period was unique, and so did the later cloth animation.^[4]Unfortunately, not paying enough attention to this field of industry naturally has made this new category of art failing to maintain advantages and innovation, which eventually leads to technological stagnation and so far behind the level of production overseas.^[5]

However, since 2006 when the General Office of the State Council forwarded Some Opinions on Promoting the Development of China's Animation Industry issued by the Ministry of Finance and other authorized departments, the Chinese animation industry has stepped on a rapid development track and made great achievements.

In 2011, a total of 435 home-made TV cartoons, for 261,224 minutes, were produced nationwide, which increased by 18 percent over that of 2010; of which 276 were produced by the National Animation Industry Base for 190,290 minutes, accounting for about 72 percent of the country's total output.^[6]In the same year, the output value of China's animation industry reached 62.172 billion RMB, 32.04 percent up comparing with 2010. Although there is no official report of the relevant data of the year of 2012, however, it is believed there must be a significant increase compared with 2011.

In July 2012, on the basis of a series of policies to support the development of China's film and television animation industry, the cultural industry department of the Ministry of Culture issued the "12th Five-Year Plan" for the development of the national animation industry.^[7]It proposed that "during the 12th Five-Year Plan much importance should be attached to the building of 5 to 10 well-known domestic animation brands and backbone animation companies. It can be seen that the central government pays great attention to the development of the animation industry, putting the focus on the cultivation of new media animation in industrial development."

Now there has emerged a lot of excellent works in terms of Chinese animation. For example, since The Legend of Qin series started to broadcast in 2007, six seasons, an extended animation named Nine Songs of the Moving Heavens and several extras, as well as a big movie, have been released. Among them, the ups and downs of the story plot and delicate painting quality attract the audience of all ages. There is also the one called Fog Hills of Five Elements, directed by Lin Hun, getting as high as 9.3 scores graded in Douban. Today Chinese animation has been slowly catching up with such countries with the developed animation industry as Japan and the gap between them has narrowed. And some of the animations have been exported overseas, which is a great achievement. The Outcast and Scissor Seven have caused a great response in Japan, the animation country, known as the "superb works".

3. Problems in the Development of the Animation Industry

Although the animation industry in China is developing vigorously, there are still many shortcomings to be solved. Infringement and piracy are still rampant.

3.1 Weak consciousness of the law and rights safeguarding

Although China is vigorously advocating people to learn the law and use the law, the legal consciousness as well as the consciousness of rights safeguarding of the ordinary people are still in deficiency. It won't occur to them to safeguard their rights until harms have been caused. Because of the influence of some ideas in traditional culture, people like to deal with problems by principles of "reducing major issues to minor ones, and then minor issues to naught" to solve conflicts and violations. But this kind of blind forbearance leads to no good but make the lawbreakers more arrogant in infringement. Nowadays as science and technology and network develop rapidly, the piracy infringement phenomenon is more rampant. With the help of these high-tech tools, "the marginal cost of replication is almost zero."

^[8] As a result, more pirated products snatched the market that should have belonged to the genuine edition. What's more, the obligees also give up safeguarding the infringement of their rights for fear of trouble. In addition, the cost of applying for judicial help may sometimes exceed the value of the work itself. This also makes obligees more afraid to protect their rights.

3.2 Imperfect development of industrial chain

The cartoon products of the animation industry often create more value than the original animation. America's Iron Man, for example, made a huge profit for Marvel. Such products as its films, figures, and animation image have become the creator of profits. In contrast, the animation industry chain in China is broken, unable to form a complete system.

In the entire industrial chain, comics, animation, novels, as well as cartoon products are all processed independently by various manufacturers. The truth is comic novels relying on publishing houses, animation needs investing, and cartoon products need to be designed by specially-assigned people. These manufacturers only pay attention to their own interests, who can not take into account the integrity of the entire industry, resulting in the production process of piracy, liquidity difficulties, poor processing quality, and other problems.^[9]

In the development of the whole animation industry, the development and improvement of the third-party platform are ignored. In the transactions between creators and merchants and enterprises, third-party regulatory agencies fail to supervise and guarantee the rights and interests of creators not to be harmed. When obligee applying for intellectual property protection and resolving economic disputes, the third-party platform has no relevant right to make legal decisions on illegal merchants. In the meantime, such laws and regulations as Patent Law, Trademark Law, and Copyright Law fail to effectively cover the whole scope of the protection content of an intellectual property. Some creative achievements that not presented in a substantive way can not get protection.^[10] The judicial sector of the country also has an unclear division of labor, powers of office overlapping, and other phenomena. This will make departments shirk responsibility or get into cross-law enforcement. So that illegal elements have a loophole to exploit and destroy the stability of the animation market.

4. Solutions

Based on the above problems and to get them solved, this paper gives the following methods.

4.1 To extend publicity

The government should improve people's understanding of the law through the network, television, newspapers and other methods to publicize the importance of rights safeguarding. By raising the copyright consciousness of the citizen nationwide, the social binding force of morality can be gradually formed, and strict norms will be carried out from the depths of people's thoughts. On the basis of this moral binding, the infringers will realize that their actions are wrong, and should be condemned by the whole society. Special funds for local governmental propaganda activities should also be allocated, so that it can vigorously promote the propaganda work of the local government sector. Government sectors are required to regularly carry out targeted law popularization days of intellectual property. Through the publicity activities that local governments launched in such places as the local communities, villages, towns, and public places, people will get a correct understanding of legitimate interests of their own intellectual property.

4.2 To perfect the legal system

In the rapid development of society, the establishment and improvement of the legal system of intellectual property rights require the detailed legislative protection of copyright, trademark rights as well as related rights and interests protected by patent rights, so as to ensure that every creator can be protected. As for the animation image and copyright that haven't presented in a substantive way, legislative protection should be given to prevent plagiarism from the beginning of creation. Moreover, under the background of the high development of science and technology, it is easy to breed Internet crime. So it is necessary to strengthen the management of the Internet, establish a strict Internet supervision system as well as related legislation in lawmaking. In addition, by means of the joint work with such Internet companies as Alibaba, Tencent and Baidu, actions should be taken to strictly control their trading software, and if there are intellectual property infringement, deal with it immediately. At the same time, it is necessary to increase the degree of punishment for infringement in the making of criminal law. By means of strict legal means, the behavior of lawbreakers will be regulated and the stability of the animation market will be ensured.

4.3 To promote the development of industrial chain

Through the support and guidance of local governments to the animation industry, so that the development of the animation industry chain can be promoted. On the "train" of "creation-production-publication-performing-broadcasting-selling", each link should not be missed. It is important to ensure that the rights and interests of each obligee are not infringed in the very beginning of creation, and resolutely crack down on piracy; to promote the construction of third-party platforms to help the country manage the animation industry in an orderly manner; to build a bridge between

the creator and the government, so as to quickly communicate the relevant policies of the government, and reflect the problems of the creator put forward. Between the obligee and the merchant, the third-party platform has the arbitration function in economic and copyright to help resolve the dispute. It can effectively promote obligee to make judicial complaints in the infringement of rights and interests rapidly and accurately. So that precautions should be made beforehand in case there would be “difficult to redress the injustice”, and if it is failed, it will lead to the low animation original creation enthusiasm and make the whole industry be in instability. In addition, a network intellectual property protection system should be set up. Through this system, such online illegal acts as piracy and infringement can be screened, so that those who committed crimes on the Internet will be brought to justice.

5. Conclusion

The animation industry is China’s sunrise enterprises, which is still in the initial stage of development and there is still a long way to go. As creators, we should have a correct understanding of this objective fact and cannot lose confidence and original spirit just because there is a big gap between those countries with the developed animation industry. For the country, it is necessary to perfect the legislation and supervision function of the whole industry chain, guide the animation industry to step on the correct road, and ensure the stable and orderly development of the industry.

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