

On the Legal Regulation of Infringement of Public Figures' Emoji Portrait Infringement

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Abstract. Ge You sued E-Dragon Travel for unlawful use of the photo of "Ge You lying down" for advertisement and sought that E-Dragon Travel apologize to him and reimburse him for the losses he suffered. Ge You's lawsuit against E-Dragon Tourism drew attention to celebrity emoticons once more. Language, in certain ways, can no longer adapt to the needs of human language in the age the Internet. Emoji is a new form of communication that has gained extensive societal attention, as well as being "noticed" and "loved" by businesses. As a result, several forms of infringement appear one after the other. First and foremost, the concept and characteristics of the public figure emoticon picture right are explored in this work. The classification of emoticons is provided, and the public figure emoticon image infringement may or has been constructed to assess the problem. Finally, it makes practicable solutions to preserve the portrait right of prominent figures' emoticons in China by combining China's practical experience and the great experience of international nations.

Keywords: Emoji; portrait right; public figures; reasonable use.

1. Introduction

1.1 Background

Network emoticons cannot be established or developed without the advancement of Internet technology, the popularization of social software, and public acceptance. With the rapid advancement of network technology, the network is becoming more and more integrated into public life, and the number of Internet users is growing rapidly; by early 2021, the number of Chinese Internet users will have surpassed one billion.[24] The rapid development of communication technology, 3G, 4G, and even now the continuous development of 5G, people in the 2G, low bandwidth era of simple text communication can no longer meet the needs of contemporary people, coupled with the pursuit of a variety of social APP software, as well as people are more and more likely to use the network of social networking ways to express their views on things and to share the joys and sorrows of life, between people used to use the network of social networking ways to express their views on things and to share the joys and sorrows of life, The way people communicate has also changed from the previous ASCII symbols to all types of emoticons, emoji emoticons, and eventually evolved into emoticons having all kinds of novelty aspects that are popular today.

This way of sharing, rather than traditional paper, has created a virtual area in the network environment, and sharing appears to have attained a stage of "unlimited" liberalization. People are increasingly employing emoticons in this day and age of rapid Internet development. Furthermore, because of the simple production process and low cost, even if netizens don't quite understand what it means, the rapid development and popularization of "emoticons," which has increasingly become a daily communication tool for netizens in China and, as a kind of network popular culture, has become a kind of "just need" and developed into a hot trend, will not be hampered.

1.2 Research objectives

With this theme, the author wishes to analyze the applicability of the existing legal framework to the portrait infringement of public figures' emojis, including portrait law, copyright and reputation. To assess whether sufficient protection mechanisms have been established to deal with infringement in this emerging field. To provide a more comprehensive understanding of the legal regulation of public figures' emoji portrait infringement through comparative studies with foreign countries, and to draw on the experiences and practices of other countries or regions to provide a broader perspective

and reference. Based on the analyses and explorations of the first two research objectives, reasonable legal proposals and reform programs are proposed to strengthen the legal regulation of public figures' emoji portrait infringement. This may include amending existing laws, enacting new regulations, and enhancing judicial practices and interpretations to ensure that public figures are properly protected in the use of emoji portraits. It has become a kind of "just need" and developed into a kind of craze as a kind of network popular culture, especially the emoticons with the facial features and body postures of celebrities and idols, and the resulting commercial value should not be underestimated. At the same time, it exposes people's information in a seemingly "unlimited" environment, and the emergence of emoticons has brought challenges for us to protect their legitimate rights and interests in the network environment, but from the current state of China's research, there are still deficiencies in this area of research, when the fact of copyright infringement does not have a more mature, unified solution.

2. Literature review

2.1 Current status of domestic research.

According to Wu Likui's essay "public figures "emoticons" portrait right infringement issues to investigate," the evolution and development of the network "emoticons" can be largely divided into three periods: It is 1982" smiley" symbols in the 1.0 period; in the 2.0 period, the mainstream app emoticon language is commonly used; and in the 3.0 time, users can design their own preferred emoticons. From a legal standpoint, the article discusses three major bottlenecks in the process of identifying infringement behaviors by public figures: the difficulty in identifying the target of infringement behaviors, the lack of relevant legal provisions for individual infringement behaviors, and the high cost of defending rights.

After 2000, the study of "public figures" began to emerge in domestic theoretical circles, particularly after the "Fan Zhiyi v. Wenhui Xinmin United Newspaper Group Infringement of the Right to Reputation Dispute," and research groups include journalists and jurisprudence experts. Wang Liming's Restriction and Protection of Public Figures' Right to Privacy[23] and Yang Fan's Jurisprudential Analysis and Legislative Improvement of Restriction and Protection of Public Figures' Right to Privacy[7] are two examples of legal scholars' theses. There are also dissertations on a specific personality right of public persons, however the number of research on the portrait right of public figures is rather minor in comparison to the rights to reputation and privacy.

Zou Lingyun in the "production, use of emoticons involved in the determination of infringement liability" in an article on a "engineering man" rights success, "tycoon blogger" recognized the infringement, and took the initiative to pay 500 yuan royalties this case analysis, put forward to the production and use of emoticons involved in the determination of infringement.[9] The case was examined, and a method for determining copyright infringement in the production and use of emoticons was proposed: the pure anime image should be protected by copyright, the series of emoticons made of video and photo screenshots should be protected by copyright, and the recreation based on the anime image and screenshots should be analyzed specifically for originality. It also investigated infringements of the right of portrait and the right of reputation.

2.2 Current status of foreign research.

The publishing of the book "the right of publicity" in 1954 played a part in fostering the growth of public figures' "right of publicity" in the United States. The book's writers proposed establishing a right of publicity to compensate for a lack of privacy protection and unfair competition in personal and property rights. After much deliberation, it became evident that both the general people and world-famous public figures would profit from this. The objective purpose of the right to advertise is gradually broadening, but there is no doubt that copyright is always safeguarded.[12]

The defendant in Cohen v. Herbal Concepts, Inc.[4] exhibited two naked ladies on the back of its advertisement. The plaintiff claimed that her husband recognized the people in the photos as his wife and daughter and filed suit against the defendant. The defendant argued that the general public would

be unable to identify them. The court, however, rejected the defendant's defense, noting that recognizing another person is not limited to face traits, but also includes hair, bodily attributes, and posture. In assessing if a portrait is recognized, factors such as the characteristics of the portrait, the event, and the description should be considered.

In France, the French scholar Perreau is the pioneer and pioneer of the theory of personality rights, in his book "personality rights" on the forms of personality rights in a more extensive discussion, and improve the protection of the right of portrait in the right of personality.[16] Scholar Demogue contends that if the right to portrait is violated, the resulting damage should be compensated,[6] while scholar Nerson contends that the right to portrait is the first non-property right possessed by humans and that, if violated, it should be jointly and severally liable for compensation.[13]

The author did not find on this kind of doctrinal study for the public figure "emoticon" this new form of expression, but the infringement of the right to portrait of public people in foreign countries has been pretty mature research. Some legislation and judicial practice have discovered a means to overcome such disagreements. There is a foundation for dealing with new kinds of expression.

3. Methodology

This article examines the concept, characteristics, and key content composition of portraits of public persons in the context of the Internet era. This study addresses the shortcomings in the protection of online portrait rights of prominent persons in China, as well as the criteria for designating the topic, through the analysis of important examples.

As a research approach, this study primarily employs the logical analysis method, empirical investigation method, comparison analysis method, and value analysis method.

Method of logical analysis: This paper examines and argues logically via actual situations, highlighting the debate that exists in the protection of the portrait right of Chinese prominent people' emoticons as well as the approach to resolve it.

Empirical investigation method: evaluate and study the present case and other similar reference instances, progressively build the arguments and inquiry, and argue based on the case's actual condition, so that the research is more persuasive.

Method of comparative analysis: By comparing the current situation and achievements of legal research in China and abroad, combining the excellent experience and legal concepts of foreign countries with current legislation and judicial practice in China, deeply connecting with and exploring the domestic situation, and comparing and analyzing to arrive at advanced theories and explanations that best meet the current situation of Chinese law.

Aiming at the social characteristics of public figures, and based on civil law principles, study the scope of protection of portrait rights of public figures, thus extending to countermeasures for the protection of portrait infringement of public figures' emoticons, and clarify in depth the legal basis of portrait infringement and the way of relief through the study of the new content of public figures' emoticons.

4. Overview of Emoji Infringement of Portrait Rights by Public Figures

4.1 The concept of portrait rights for public figures.

The portrait right of public persons refers to the right of public personalities to manage and protect their portraits. In law, prominent figures typically become the focus of public attention as a result of their activity in politics, culture, entertainment, and sports. Portrait rights of prominent personalities differ from those of ordinary people in that portraits of public persons are frequently exposed to more commercial exploitation, media coverage, and public attention.

4.2 Differences between picture rights for public figures and natural persons.

4.2.1 The portrait subject's identity.

Individuals with strong public exposure, such as politicians, celebrities, athletes, and others, who have widespread social recognition and media attention in the public domain, are considered public figures.

Natural person portrait rights pertain to all individuals, regardless of social visibility, as long as they are ordinary citizens.

4.2.2 The scope of portrait right protection.

Portrait rights of public figures: Because of their exceptional stature and widespread awareness, public personalities' portrait rights are usually more carefully protected. They have the right to govern the use of their likenesses in commercial exploitation, media coverage, and other public communications.

Portrait rights of natural persons: The protection of portrait rights of natural persons is relatively narrower, relating only to the economic exploitation of their likeness and the protection of their right to reputation. In some nations, the right to a natural person's likeness is protected by the right to privacy.

4.2.3 Achieve a balance between fair use and free expression.

Portrait rights of public figures: Protecting public figures' portrait rights usually necessitates taking into account considerations such as freedom of expression, news coverage, and public interest. Their likenesses may be influenced to some extent by public rights and interests, as well as societal public interest.

Portrait rights of natural persons: The protection of natural persons' portrait rights focuses primarily on the individual's right to privacy and autonomy. In some nations, the preservation of natural persons' picture rights may not be subject to public interest balancing concerns.

4.2.4 Commercial exploitation and authorization.

Portrait rights of public figures: Public figures' portraits are frequently associated with commercial interests, and they may approve or license the use of their photographs for commercial reasons in ads, product promotions, and so on, in order to obtain financial benefits.

Portrait rights of natural persons: Portrait rights of natural persons are typically focused with personal privacy and the individual's own decision, rather than commercial exploitation.

4.3 The concept of emoji portrait rights for public figures.

Portrait rights of public figures: Portrait rights of prominent people are typically related with business interests, and they may auThe right of public figures to emoji portraits refers to the ability to regulate and protect public figures' portraits in emoji packages (also known as emojis or emoticons). Emojis are global symbols that represent various sentiments and feelings in the form of pictures or icons. They are frequently used to describe emotions and attitudes in chat apps, social media, and online interactions.

The right of public figures to emoji portraits includes the right of public figures to their emoji portraits. When a public figure's likeness is turned into an emoji and distributed over the Internet or other media, the public figure may desire to regulate and protect the use of his or her likeness in order to ensure that it is used responsibly in public discussions.

4.4 Characteristics of Emoji Portrait Rights for Public Figures.

4.4.1 High visibility of public figures

The public figure emoji portrait right applies to individuals with high public visibility who have wide recognition and popularity in society, such as politicians, celebrities and sports icons.

4.4.2 The right of likeness is involved in the creation of such emojis.

The interest is in the creation of emoticon portraits of public individuals, which can be expressed in the form of photos, icons, or other formats for communicating various expressions and emotions.

4.4.3 Widespread public dissemination.

Portraits of public figures in emoji packs are typically extensively distributed on the Internet, social media, and other media platforms, and a great number of users utilize and share them.

4.4.4 Right to control and protection.

Public figures wish to exercise control over their likenesses in emoji packs to ensure fair use of their likenesses in public communications. They may wish to prevent unauthorized commercial exploitation, damage to reputation or other undue influence.

4.4.5 Right to fair use and press coverage.

The right to emoji likenesses of prominent persons must also be protected by taking into account the scope of fair usage and authorized journalistic coverage. In some circumstances, the use of emoji portraits may be consistent with free expression and news reporting ideals.

4.4.6 Involves a balance of the public interest of society.

The right to emoji portraits of public personalities must be protected by striking a balance between the public interest, freedom of expression, and individuals' rights and interests. Public personalities act in the public realm, and their picture rights may be modified by social public interest.

4.5 Main Types of Emoji Portrait Infringement of Public Figures.

4.5.1 Emoji Packs Made Using the Real Identity of Public Figures.

With the continuous development and growth of various technologies and media, it has become critical to tailor services based on the many distinct images of public figures' genuine identities, as well as people's emotional expression requirements. They are currently used as emoticons to transmit emoticon users' feelings and to enliven the environment among emoticon users by developing and processing the actual image of public figures' personalities.

4.5.2 Emojis Made with Movie and TV Images of Public Figures.

Many emoticons circulating on the Internet use celebrity characters coupled with images of scenes from dramas, such as the well-known characters "Su Daqiang" and "Erkang".

4.5.3 Emoji Packs Made Up of Animated Images of Public Figures.

It is a form of expression that is continually being enriched as it evolves. Animated graphics are more vivid than static drawings, progressing from static to dynamic, from simple strokes to visuals that may communicate the user's feelings. This expressiveness also heightens the creator's emotional touch and shock.

4.6 The Necessity of Protecting the Portrait Rights of Public Figures' Emojis.

4.6.1 Wide Scope of Infringement on the Portrait Right of Public Figures' Emojis.

According to China Internet Information Center data, the total number of Internet users in China was 854 million in June 2019, an increase of 25.98 million year on year, and the network coverage rate was 61.2%, an increase of 1.6 percentage points year on year; currently, the country has 847 million cell phone users, an increase of 29.84 million year on year, accounting for 99.1% of the total number of users, an increase of 0.5 percent.[19] As society develops and science and technology advance, people's daily lives become increasingly in need of informatization. QQ, WeChat, Zhihu, Douban, Sina Weibo, and other sorts of chatting, news, messaging, and so on, for example, are the key ways for people to acquire information. In the aforementioned applications, we can utilize vibrant emoticons not only to express our thoughts and emotions, but also to spark the environment of our interactions. "Yao Ming Face", "Ge You Lie", "Fu Yuan Hui", and "Fancy Death Su Da Qiang" are

all differentiated by their individual expressions and body postures. Because of their professional nature or identity, public personalities have a greater societal influence than the general public, making them more likely to be contentious and, conversely, more representative.

4.6.2 High Social Impact of Public Character Emoji Portrait Right Infringement.

People will inadvertently infringe on and harm the image of others while utilizing these images, as illustrated by the portrait right dispute between Ge You and Yilong Technology (Beijing).[8], it is precisely because of the rapid development of social networks and the maturity of various production technologies, which has resulted in the current proliferation of emoticon packet applications on the market, and the radiation of the infringement is becoming larger and larger, and recently it is the case of "AI face-swapping technology," emoji users can directly carry out face replacement. With the advancement of technology, the production cost of emoji packs has decreased, resulting in new issues regarding the protection of picture rights. Public figure emoticons will travel faster than ordinary emoticons, and the social impact of infringement will be bigger; thus, we should be more regulated and safeguarded within a specified range.

4.6.3 Beneficial to guide the public to establish the concept of rule of law.

With a high number of hot spots, the rapid spread of news, so that public figures of their own infringement of the "hindsight" reaction, that is, when the situation arises in a specific place or produces a certain negative social impact, will only be seen by the public. It is difficult for prominent figures to preserve their rights due to a variety of intricate considerations. However, it is regarded a "blessing in disguise" if we can use the incident's influence and attention to direct the beneficial growth of public opinion.

Under the promotion of the rule of law, the rule of law government and the rule of law society, the concept of the rule of law of our citizens is increasingly strengthened. This article discusses the infringement of public image from the perspective of mass communication, which not only enables the public to understand what is a violation of their rights, but also provides some references for the infringement of rights encountered by people in their daily lives.

5. Problems in the Protection of Portrait Rights of Public Figures with Emojis.

The Internet copyright dispute and portrait dispute cases associated on Alpha were searched for the case in early January 2020, yielding a total of 17,957 results, including 2,205 results in 2019, 2,036 results in 2018, and 1,572 results in 2017. Based on the facts presented above, it is easy to conclude that, in recent years, due to the rapid development of the mobile Internet, there have been numerous occurrences of Internet portrait infringement, but awareness of netizens' rights protection is also progressively developing. The legal rights and interests of prominent people have been violated in a considerable number of incidents of Internet portrait infringement, according to sampling research of the aforementioned data. In comparison to the general public, the public image will be more deeply exposed in front of the public, but this kind of exposure does not come without a cost, simply because the limits are not defined clearly enough, resulting in a greater degree of legal rights and interests of public figures being violated.

Although there has been an increase in judicial attention to the protection of network portrait rights in recent years, the majority of them are established on the basis of "whether to profit for the purpose," and whether to profit for the purpose of the majority of cases is measured by the amount of money, but the court in the judgment of the amount of damages due to infringement of copyright infringement is very difficult to have a unified standard, which fully demonstrates This clearly illustrates that China's civil law protection mechanisms for public figure emoticon portrait rights are far from perfect.

5.1 Infringement of the standard is not clear.

For portrait infringement of the elements of the major two tiers of definition in China's existing legislation: one is the tortfeasor infringement, and the second is the lack of comparable infringement of the reasons for blocking.

The first section provides a definition of "for profit." This legal requirement is not included in the People's Republic of China's civil code. As can be seen, this idea has been gradually eradicated in the country, but in actual judicial practice it is still applicable and does not totally negate its role. In fact, we can find that in real life, many of the infringement of rights, but also not for profit, purely for entertainment, or in order to achieve a specific goal, in order to achieve this goal of the behavior sometimes to the public figure's image will cause greater damage, this damage will be infinitely amplified because of the public figure's own peculiarity, thus deepening the harm to it. In the Ge You case, there is a dispute concerning "profitability"; the plaintiff alleged that "Yilong Travel Agency" utilized his film and television image as the commercial copy to publish microblogging for the travel agency to generate publicity, infringing on his legitimate rights and interests. The defendant, on the other hand, claimed that it did not profit from the use of the image and merely utilized it to give a sense of humor to the text. If we continue to use "for profit" as the judgment criterion, the defendant's actions raise the possibility that they are utilizing the plaintiff's film and television image to indirectly advertise their own company. From the preceding example, we can see that continuing to "for profit" this element as a necessary violation of the law will inevitably lead to some commercial companies and network platforms using some seemingly reasonable reasons to use the image of public figures for their own interests, but there is no obvious "for profit" behavior, it is difficult to limit the infringement, especially in the era of accelerated Internet development, the negative effects will be more and more severe.

Some scholars argue that the concept of "profit-making" appeared in the General Principles of Civil Law because the social forms at the time generated and caused certain economic interests, but as time passes, people increasingly recognize that the portrait right also has a significant degree of spiritual significance, so it is necessary to determine the scope of the application of this concept as early as possible, as well as from the point of view of the public. As well as from the standpoint of interests and subjective aspects of the attitude of a thorough examination of whether the violation of purpose.

The second section discusses the grounds for preventing infringement. Even when done without the permission of others, it does not always constitute an infringement of their rights. However, the key to appropriate use is whether it surpasses the "reasonableness" limit, and if this limit is exceeded, it cannot be considered justified. Simply appearing as a public figure cannot form a reason for a breach of the law; rather, it must be disclosed on the public figure's own initiative, or the public figure should have gained and known about the right, to constitute a reason for a violation of the law. In our nation, the lawful use of portrait rights is clearly specified by law, so that the enumeration of infringement not only maximizes judicial impartiality and justice, but also gives portrait rights legal protection. However, the current status of this research is still the tip of the iceberg, cannot cover all of the rationalization of the situation, and is also difficult to use in some more complex circumstances. This demonstrates that, while the usage of "justification" in Chinese legislation is stable, it lacks flexibility and rejects citizens' expectations for justice in the network environment. As a result, the rational application of picture rights should be explained and developed further in order to properly protect the portrait rights of prominent personalities on the Internet.

5.2 The goal of infringement's boundaries are unclear.

The Internet era has resulted in changes in the media on which portrait creation is based, as well as an increase in the number of methods in which it can be expressed, while conflicts in the creation of works have become more apparent due to disparities in copyright and portrait rights. The guidelines may appear straightforward, but in practice, there are so many instances that it is difficult to differentiate between them. Copyright holders are restricted to the scope of their consent and may not

go beyond the scope of their application. It is asserted in favor of their legal rights and interests in the lack of a clear regulation.

For example, on June 17, 2016, Wang Baoqiang acknowledged at the Beijing Fangzheng Notary Office that an account with the microblogging name "Smooth Thinking Software" utilized emoticons as three stills of himself from *Lost in Thailand* in microblogs posted in early 2013. The *Lost in Thailand* series of movies, directed by Xu Zheng, has always been loved by the public, especially *Lost in Thailand*, a witty and humorous movie with realistic connotations, and Wang Baoqiang, who plays the role of Baby Wang in this movie, has left a deep impression on the public with his excellent acting skills, and his classic quotes in the movie have been widely circulated by the public. Although the film's success is still being discussed, Wang Baoqiang has filed a paper case in court against a firm called Ningbo Thinking Software firm Limited. The reason for this is that the software company, without Wang Baoqiang's permission, used Wang Baoqiang in the "*Lost in Thailand*" stills image and classic quotes production related to emoticons in its official microblogging account to achieve the purpose of their own software products for publicity. Ningbo Changshi Software Co. Ltd. was ordered to compensate Wang Baoqiang for 60,000 yuan in economic damages and 1,200 yuan in notary expenses, as well as to publicly apologize to Wang Baoqiang on microblogs and in newspapers.[22] Throughout the trial, the judge reviewed and considered the case's contentious topic. First, was there a legally protected object in the case? That is, how to correctly determine the issue of the portrait of the character image. Second, how to determine whether or not the criteria of violation of copyright and reputation is met.

Relevant Taiwanese cases reveal that when the two rights conflict, the right of portrait takes precedence over the right of property, since the right of portrait carries the attribute of personality right, which is an embodiment of the spirit. However, in today's social milieu, this reasoning is not very robust. Copyright also symbolizes a form of spiritual right of the author, particularly public figures, and copyright also provides very strong protection for property rights, thus it cannot be simply contrasted with personality rights and property rights.

5.3 The infringement damage compensation standard is not standardized.

At the moment, China lacks precise legal norms on public image infringement, primarily because the gap between its own interests is too big, and determining the true damage is extremely difficult. Furthermore, we must include the predicted economic impact, such as musicians' massive endorsement payments, which may result in "sky-high" damages that are impossible to assess. Furthermore, there is no clearer standard for compensation for moral damages in China at the moment, therefore the laws and standards for the amount of compensation are an issue that must be resolved. In this instance, the court will reach its decision only on the basis of the existing relevant laws and regulations, therefore the amount of compensation will vary greatly, which will have a negative impact on the judiciary's stability.

In terms of compensation, adequate consideration should be given to the degree of harm incurred by the infringer, and the amount of compensation should be such that it warns and penalizes the infringer, achieving a deterrent effect. For example, if some people's infringement was discovered in time but had little impact, the punishment will not be too severe; if the abuser of subjective malice is very large and in the discovery of no repentance consciousness, the abuser should be allowed to bear the more serious consequences. The key is to grasp the scale, neither too harsh punishment nor letting the public believe that minor infringements will not be held accountable, the amount of compensation should also be determined according to the circumstances, if too harsh, will cause abuse of administrative power and the injustice of the judicial trial, but will not take any punitive measures because of the minor's circumstances. Thus, inconsistencies in determining guilt for rights infringement might lead to legal instability in our society and must be addressed.

5.4 Provisions regarding commercial exploitation are incomplete.

Personal rights, according to the traditional doctrine of personality rights, cannot occur transfer, inheritance, and other property rights, but with the development of the commodity economy, the expansion of the market economy, the commercial platform of the competition is also becoming more and more intense, coupled with businessmen on the so-called star effect of the pursuit of the so-called star driven by the commercial value of the higher and higher speculation, and consequently some of the rights also has the nature of commercialization. As personality rights have gained commercial significance, for example, paid exposure and transfer of portrait rights might be altered to create higher commercial value, prompting the thought of commercialized usage of personality rights. The primary cause of the commercialization of emoticons based on public figures' photos is because their ownership is an object that can be handled as a commodity for business transactions. In the "Ge You Case," for example, Ge You's renown and impact are so enormous that his likeness may be quantified in money. In other words, the public image can exist independently of its topic and be used for promotion, marketing, and economic gain. In the situation of a public figure's portrait being commoditized, China does not yet have corresponding legislative regulations in place. Many flaws exist in China's "personality rights" protection rules for "portrait rights" rights protection, for example, after "death," the right to "portrait right" is extinguished, but its commercialization revenue remains, and it is difficult to identify when the commercialization benefit disappears at the level of objective facts. And, in most situations, the misuse of public image is done to increase profits and benefits, but when the infringement occurs, their losses are typically smaller than the remuneration they receive, which makes them lethargic to safeguard their lawful rights and interests. The point is that once a case of infringement by a public figure based on commercialization occurs in judicial practice, the judge lacks appropriate legal norms to serve as the basis for the trial, which is also very detrimental to the protection of citizens' rights and interests and the stability of the legal system.

6. Suggestions for Improving the Civil Law Protection of the Portrait Rights of Public Characters' Emoticons in China.

6.1 Clarify the criterion for determining rights infringement.

Because the People's Republic of China's Civil Code lacks matching legal provisions on "for profit," the particular bounds of infringement liability and damage liability should be specified in order to properly safeguard individual citizens' personal rights. To protect the legitimate rights and interests of public figures, the scope of reasonable use should be more clear and specific in the relevant situations. In terms of legislation, the constitutive elements of "for profit" are reconsidered, and references to relevant contents of foreign countries regarding the infringement of the cause of blocking are made, and the relevant regulation of the infringement of the cause of blocking of network portrait in China is gradually improved.

6.1.1 Re-examining the purpose of profit-making.

The necessity of "for profit" was originally intended to raise the public's attention to their property rights and interests. However, since the development of the commodity economy, the public has long recognized the importance of their own property rights and interests, and will take a variety of measures to remedy their legitimate rights and interests, if the concept of "for profit" as a qualifying criterion, will inevitably ignore their personal spiritual values' rights and interests. Professor Yang Lixin described the rules of the General Principles of Civil Law on "profit-making" as a form of authorisation rule rather than an important part. The true significance of this approach is that it sets explicit provisions for the proper use of portrait rights. Although this concept is dismissed as a determining factor, "profit" might be utilized as a standard of judgment.

With the development of the Internet society, there are some new infringement modes. Although the nature of network portrait infringement and ordinary portrait infringement is not very different,

there is a significant difference in the infringement and infringement of the purpose of the infringement of the way. Current network infringement is not only confined to profit-making, but also to spoofing, scandalizing, and gaining public attention, according to the "profiteering" infringement attitude.

As a result, the area of its applicability is restricted when deciding whether the ingredients of profit-making are present. This paper contends that, in the network era, in order to fully protect Internet users' personal rights, the subjective purpose of seeking profit must be examined, and those who are not aiming at profit-making should be taken as the main subject, and the scope of its determination should be appropriately broadened, and its existence should be included in the determination of infringement liability.

6.1.2 Systematizing justification for non-compliance with the law.

In our country, the enumeration of the broad source of inhibition is rather apparent, but it cannot be successfully used in practical operation due to its own limits. For example, in the instance of "Ge You Lie," it is not possible to generalize that the use of the emoticon is an infringement of Ge You, because people can express their emotions and feelings through social software on social media platforms, which is a valid conduct in and of itself. In terms of legislation, we can extract a portion of the essence from relevant Japanese law. For example, Japanese law currently primarily employs the principle of "six elements" of the cause of blocking, i.e. determining whether it is an infringement of rights based on six elements, namely social status, content of the filming, location of the filming, purpose of the filming, method of filming, and necessity of the filming.[15] The "six elements" theory is based on six aspects: social standing, substance, location, purpose, manner, and necessity. After taking into account all of these factors, if the harm to the individual's rights and interests exceeds the legally acceptable range, it may be regarded an illegal infringement. The social status of public figures can be regarded as one of the constituent elements in the "six elements" judgment criterion, which has a certain influence on the characterization of the facts of the case, but this influence is not unavoidable, and the reasons for the illegal blocking of the six elements can be judged and dissected according to more detailed legal norms, and the public figure can be considered a public figure if his personal rights and interests are exempt. The "six elements" can be based on more detailed legal norms to judge and analyze, unlike our country's enumerated abstract generalization, which has certain limitations; this can be better adapted to the ever-changing forms of infringement in the network society, making it more conducive to the preservation of network portrait rights. However, Japanese law has flaws in this area, the most notable of which is that the protection of personal rights is overemphasized while property protection is limited.

The area of applicability of the term "fair use" is clearly established in our law, and the Japanese "six elements" can be used as a guide. As a result, we can use the two forms of "enumeration" and "elements" to determine the cause of infringement; on the one hand, it allows the judge to apply the cause of infringement more accurately in judicial trials; on the other hand, it does not overly expand the judge's discretion. This safeguard is commensurate with the characteristics of public figures' online picture rights and is favorable to playing a constructive role in judicial practice.

6.2 Clarifying the boundaries of protection of portrait rights and copyrights.

German law has more closely clarified the contrasts and linkages between the notions of copyright and portrait rights. Article 60 of the German Copyright Act stipulates the legal reproduction of portrait works, effectively protecting the property rights and interests involved in portrait rights and interests.[1] In a sense, the German Copyright Law provides strong legal protection for portrait rights, and the property rights and interests in portrait rights have also gradually gained people's attention with the development and evolution of the Internet media era, the German law in the protection of the way, although there are deficiencies, still has a certain degree of advancement and can be used as a reference, therefore, in comparison to the general public, the asset worth of a public figure is significantly larger, and it can be drawn on the definition of German law to focus on solving the problem of ambiguous limits in China's public figure picture infringement.

So, how can we know whether the infringer has violated the copyright or both? If an infringement uses another person's portrait without permission and the copyright holder obtains permission from the portrait owner, the infringer has violated the copyright. Delineating the boundaries of the two rights is also a powerful tool for defending both.

6.3 Harmonization of Damages for Infringement.

Civil recompense for the wrongful act can be assumed and separated into two types: property relief and spiritual relief, depending on the infringer's subjective malignancy and the severity of the behavior. Only in this manner can the infringing person's portrait right be properly protected. In comparison to other forms of infringement compensation, determining the amount of monetary compensation based on the degree of infringement is challenging and difficult to quantify.

6.3.1 Determination of Profitability Standard.

In judicial practice, determining victim damages is a complex matter, and public image infringement cases on the Internet frequently involve property interests. Both the Tort Liability Law and the People's Republic of China's Civil Code indicate unequivocally that if property is damaged, the advantage acquired by the infringer should be used as the compensation requirement for the infringement if it cannot be recognized. In most cases of Internet portrait infringement, determining the exact level of the damage and the actual gain obtained by the offender is challenging.

reimbursement for damages resulting from the infringement of public rights in the United States is generally classified into two types: one is based on the infringer's gain, and the other is based on actual monetary damages as the basis for reimbursement. In both circumstances, the individual who infringed may apply the maximum amount. Furthermore, because of the special social status of public figures, if there is a disagreement on the amount of compensation, it is necessary to give due consideration to their market value and conduct independent research on the attributes of their property rights so that moral damages are not confused with them.

6.3.2 Comprehensive consideration of infringement methods.

Given China's current legal system's shortcomings, the specific determination and application of infringement liability in China's legal system necessitates a thorough examination of the time and scope of the infringement, the degree of culpability of the infringer, and the consequences of the infringement of a different degree of compensation. The Internet ecosystem is continuously growing, and once something is uploaded on the Internet, it can be seen by thousands of people in seconds, having a significant influence. Because of the rapid spread of the network and proliferation, it will cause non-commercial portrait infringement, even if the time is relatively short, the corresponding third-party website or the infringer himself has been deleted from the corresponding network of the portrait, but other netizens may have been downloaded and carried out a number of times to spread the process of the portrait of the adverse impact of dissemination is still cannot be eliminated. Furthermore, given the gravity of network infringement, the infringement of the website in the victim's relief instructions should be removed as soon as possible from the infringing portrait of the network platform, so that the infringed person's right to portrait is not violated. As a result, protecting online portrait rights necessitates that online service providers take reasonable and precautionary precautions.

At the same time, the aggressor's subjective malice can be employed to assess the standard of its damage. "For profit" can be employed as a measure of subjective malice instead of a necessary constituent part to better safeguard the public image. If the person's online portrait rights are similarly violated, the "profiteer" must have a higher degree of subjective malice. If the defendant's purpose is clear, the court may additionally impose significant punitive damages. In many circumstances, a prominent figure's image is directly tied to economic rights and interests, and the amount of usage of the image is usually high, thus evaluating whether the infringer has subjective malice is also a very essential factor in establishing whether the infringer has subjective malice.

6.4 Improvement of the commercial use of the portrait rights of public figures' emoticons.

The fundamental concept of valid use of portrait rights is that the objective is legal and legitimate, and the criteria for identifying the legitimate purpose are inextricably linked to the illegal action. The commonality of ordinary people and public figures is that both have the right to portrait as a natural person, but due to their large differences in the determination of public rights and interests in society, resulting in the reasonable use of public figures' portrait rights, which not only includes the need to obtain permission from the person himself, but also includes the commercialized use of the public figure to it.

Public figures can commercialize their personality rights and approve their portrait rights, but they must be rigorously limited and regulated so that they do not undermine the public interest or disrupt society's regular functioning. That is, public personalities who have their own portrait rights on the Internet can utilize their own portraits for commercial advantage, and the law should effectively preserve their legitimate existence. The US has implemented a tiered protection mechanism that combines the "right of publicity" and the "right of privacy." The essence of the right to publicize is a property right that can be renounced. The United States established the "right of publicity" legal system, the "right of privacy" in personal property rights and interests in the division out of a clear inheritance of the right of publicity, transferability, and so on, so that the right of publicity truly became an independent property rights. [5] In the United States, the utilization of the right of publicity represents the protection of celebrities' and other prominent personalities' commercial personality rights. The right to personal information publicity is based on the appearance and personality of public figures, etc., produced in social and economic activities, with both material and spiritual qualities, but its basic substance is based on the value of the individual's property rights. Case law and a legal framework in American jurisprudence have developed that allow celebrities to freely approve and transfer their publicity rights, i.e., a system of reasonable access to public information.

As a type of protection for Internet portrait rights, a commercial protection model comparable to the American publicity right was studied in our nation. The introduction of this notion is a practical way, based on the experience of the United States. Under the premise of portrait right, the public figure can also put forward a clearer claim when their rights and interests are subject to the unlawful infringement of others by defining the cross fuzzy part of the public figure's personal and property rights and interests, and breaking through the control of personality right, re-examining the property interests that can exist independently in the portrait right of the public figure in the new era. In comparison to a single mode of protection under US law, this "dual model" can be protected from both "privacy" and "right of publicity," as well as from person and property, which is more conducive to the relief of public figures' rights, and is also a portrait protection development trend in the network era worthy of our reference and study.

Experience with commercialized use can be gained from China's intellectual property law. According to China's applicable intellectual property legislation, usage exclusively for profit without the premise of getting authorization is unlawful, but non-profit use is not always fair. A more in-depth judgment and interpretation of whether it is reasonable or not can be formed by referring to the idea of copyright justification. The purpose of Article 24 of the Copyright Law is to preserve the public interest of society. Portrait rights are closely related to and similar to copyright, and their rights can be borrowed from copyright in several ways.

7. Conclusion

With the rapid expansion of network communication speed, the application of network emoticons that can be employed is also becoming more widespread; network emoticons have become a craze, becoming an essential type of communication culture in people's life. This article involves the "Ge You lie" case, Wang Baoqiang rights case is just a corner of the many infringements, in network emoticon disputes, the state should do the law is clear, to strengthen the supervision of the network subject, play the role of government supervision, the relevant departments should effectively fulfill

their duties, when the fact of infringement occurs, the relevant rights holders can at least have the law to rely on! Society and businesses should create an atmosphere of the rule of law in order to pursue market economic rewards while adhering to the bottom line of the law. Individuals, emoticon creators, the production and use of emoticons involved in the rights to have a clear understanding of the user to the legitimate scope of their own behavior to have a basic understanding of the only way to increase the public's awareness of the rights of the public in order to avoid making emoticons "infringement package" At the moment, although the nature of the network emoticon is still controversial, its legal rights and interests are still being studied in depth by scholars, for the network emoticon laws and regulations, there is still room for continuous development and improvement, but the network is not outside the law, we always keep in mind the civil rights and interests that may be faced with a violation of the law, consciously follow the laws, regulations, and social morality of the supervision of the law, and respect for their own and other people's legitimate rights and interests, and consciously participate in the network to purify the activities. We must respect our own and others' legitimate rights and interests, as well as actively participate in network purification efforts, in order for our country's emoticon culture business to thrive in a legal environment.

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