

Research on the Attribute Identification and Copyright Protection Mode of Online Game Works

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Abstract

In the context of today's big data, the game industry is developing rapidly, and the frequency of introducing new online games is becoming faster and faster. Online games have complex characteristics, consisting of many elements such as game dynamic screens, computer software, game rules, scene maps, character images, text introductions, and background music. In addition, according to the classification of game modes, online games are also divided into music, games, quizzes, cultivation, and other games. This article has studied the definition and classification of online games, the constitutive requirements of works in copyright law, and the determination of infringement through literature review. It has conducted different determinations of games as a whole and as a split. By analogy with domestic methods of determining audio-visual works and computer software works, it has summarized practical trends and past judicial cases, proposed to establish online games as a separate type of copyright works, and expounded its necessity and feasibility. At the same time, it proposes a protection mode of "integrating integration and separation" to protect the interests of all copyright owners to the greatest extent and more completely. This mode aims to protect the entire online games while also allowing some elements to be removed, which can further promote industry development and economic flow.

Keywords

Online Games; Copyright Protection; Copyright; Works.

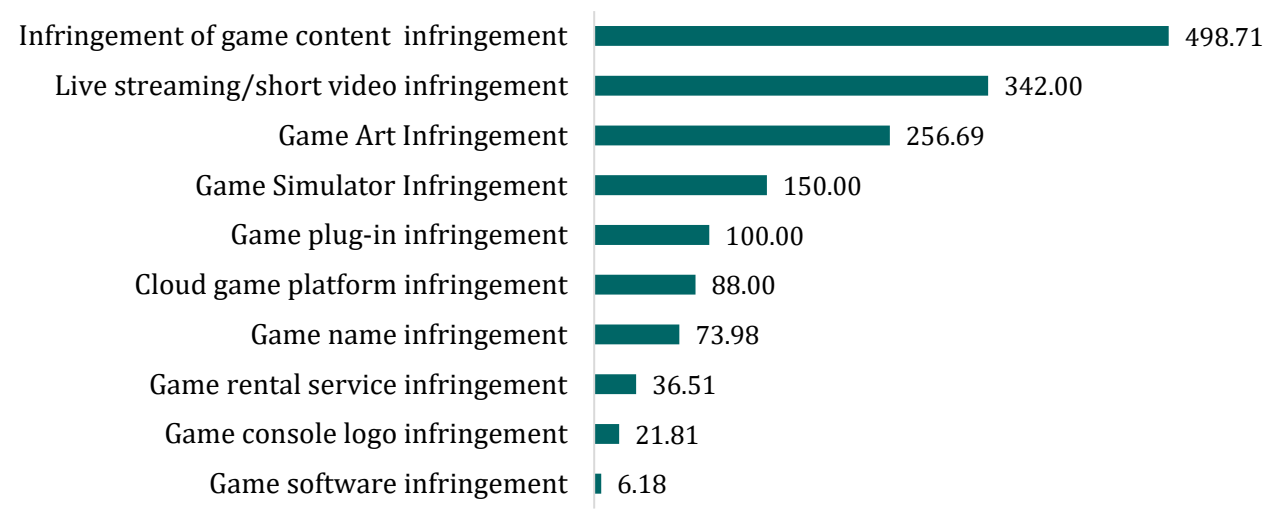
1. Introduction

Compared with Japan and Europe and the United States, the development of China's online game industry is relatively slow and has a relatively short starting time. With the continuous development of China's cultural industry and network information technology, the online game industry has gradually emerged. The online game copyright infringement dispute has also changed from the initial simple copying and copying of source code to copying of online game elements.

From the current technical perspective, infringers write different program codes to create game products that have the same or similar functions and audio-visual effects as others' online games. The existing protection mode cannot provide comprehensive protection for the development of online games. Therefore, studying the type identification and protection mode of online game works has important theoretical and practical significance.

Based on the statistics of the average amount of compensation awarded for various types of infringement cases, the average amount of compensation awarded for infringement cases related to the content and name of the game itself is relatively high. The average amount of compensation awarded for infringement cases involving the game itself is 1283900 yuan. It can be seen that direct infringement of other party's game copyright within the game may result in higher compensation liability.

Table 1. Average amount of compensation awarded in various infringement cases (10000 yuan)



2. Core Content of Online Games

Typically, a game is embodied as a computer software in the form of computer code and data files. The core content of a game product is mainly divided into two parts—a game engine and a game resource library.

During the running process of the game, the game engine system automatically or at the request of the user, calls the material of the resource library at any time and presents it to the user. Game engines belong to "computer software" referred to in Article 3 of Copyright Law of the People's Republic of China, and are simple computer programs composed of instruction sequences. Due to the widespread application of decompilation methods, it is easy to avoid infringement identification by changing the programming language or changing program details. Therefore, many companies achieve the goal of utilizing the labor achievements of others and saving costs by rewriting source code and using materials in the resource library in the form of new code, which is more advanced and difficult to identify.

Game resource database refers to a resource database composed of various materials and fragments in computer game software, which is represented as a collection of various audios, video, pictures, text, art works, etc. In China's judicial practice, these elements can be classified and protected in categories such as text, art, music, photography, and film work in copyright law.

3. Identification and Analysis of Online Games as New Works

According to Article 3 of the Copyright Law of the People's Republic of China, the term "works" as used in this Law refers to intellectual achievements that are original and can be expressed in a certain form in the fields of literature, art, and science. Therefore, we conducted a work identification analysis of online games.

3.1. Belonging to the Fields of Literature, Art, and Science

Online games can not only create an artistic atmosphere, but also be implemented by code and programs. They should belong to the fields of literature, art, and science.

3.2. Conforming to "Originality"

"Independent" refers to "independently created and derived from oneself.". "Creation" requires reaching a certain level of intellectual creativity. The creation of online games involves the author's own innovation and creativity, and should meet the standard of "originality".

3.3. Can be Expressed in a Certain Form

Online games are presented through interactive audio-visual works through platforms, websites, small programs, and other carriers.

3.4. Belonging to Intellectual Achievements

Online games are created through the author's knowledge and artistic sense, and are not mechanically completed. They should be intellectual achievements.

In summary, online games fully comply with the "works" in the Copyright Law.

4. Online Games Confirmed as the New Object of Copyright Law

This article advocates directly confirming the special object status of game works in copyright law and providing special protection. Unlike audiovisual works, although online games can be viewed as cinematic works composed of static images of one frame, their dynamic images must be implemented by programs, code, and game rules; Unlike computer software, online games do not simply command computers to complete tasks. They convey literature, art, scientific beauty, and even ideas and information to users. However, it is undeniable that online games gather the innovation of many people, belonging to special audio-visual and cooperative works. If the infringement phenomenon of online games is allowed, it not only greatly reduces the enthusiasm of online game developers for innovation and creation, but also violates the basic requirement of "protecting intellectual property rights is protecting innovation" emphasized by the current state.

Throughout the past legal practice, by comparing the development history of audio-visual works, game works can be compared to audio-visual works as a new type of work. Online games are the product of the development of social technology to a certain stage, and they are also unpredictable technological products, which rely on technology. The game itself is a whole, and game users can make different choices based on their imagination, preferences, and dynamic operations, resulting in different visual images, scene settings, and game endings. However, these plots and results are still preset by game developers in accordance with the rules. This is a significant difference between game works and traditional movies or audiovisual works, and also allows game works to become a new type of work independent of audiovisual works.

Currently, the infringed party claims that the copyright of the computer software of the infringed game focuses on the protection of the operation process and expression of the source code software, but it cannot prevent the increasingly advanced means of infringement. Listing online games as a new copyright object is conducive to solving the current dilemma of game piracy infringement and more effectively combating the current rampant game infringement.

5. Define the Scope of Protection Using the "Dichotomy of Thought and Expression"

The game, as a composite composition, is composed of elements such as the game name, trademark logo, scene map, storyline, character image, text introduction, dialogue narration, background music, and so on. Therefore, in the trial of game cases, it is necessary to first clarify the elements that are protected by copyright law in the game, that is, whether game works can be protected by copyright law as a whole, and which elements can individually constitute the protected objects of copyright law. In judicial practice, this issue is reflected in the distinction

between thought and expression, which means that judges must define the scope of "expression forms" protected by copyright law.

Firstly, it should be made clear that copyright law protects the expression formed by original labor, and does not protect the ideas or facts reflected in the expression. The ideas embodied in works can be expressed in different ways. Thought is the integration of an author's understanding of concepts, aesthetic thoughts, and personal perspectives. It must be known through "expression". However, the dissemination of new ideas can promote the progress and development of society as a whole. Therefore, from the perspective of balance of interests, thought should not be protected. Copyright law has always implemented the "dichotomy of thought expression" and does not provide protection for abstract and difficult to fix ideas. Therefore, when game companies claim that their game inspiration or game rules have been copied or infringed on the grounds of copyright infringement, it is generally difficult to obtain the support of the court in copyright law.

In practice, it is often difficult to completely separate thought and expression, but it is difficult to completely separate them due to their integration. For example, game themes, game scenarios, level settings, skill algorithms, character relationships, etc., there is no unified standard for what belongs to thought and what belongs to expression, and it is difficult to delineate boundaries. Determining the protected expressions in game works is the result of continuous abstraction and filtering. Therefore, the distinction between ideas and expressions is of great significance in determining whether a game constitutes substantial similarity to other works, and is also the first step for courts to determine whether the game as a whole and its constituent elements are infringing. When it is difficult to distinguish between thought and expression, judges mainly use the "whole to specific method" to distinguish, that is, if a certain content is limited to a general and general narrative as a whole, it is not sufficient to become an expression. If the content is specific enough to make people perceive the source of the work and generate specific associations with the idea between it and the author, it is sufficient to become an expression.

6. Online Game Copyright Protection Mode

6.1. Game Rules are not Protected by Copyright Law

Whether game rules, gameplay, and themes can be protected under copyright law has always been controversial. The setting of game rules, the development of gameplay methods, and the selection of themes are important parts that embody the creativity of game developers, and they are also the most easily homogenized and imitated by later generations. It is generally believed that creativity belongs to the category of ideas and cannot be protected by copyright law. That is, imitators who do not directly copy the specification of rules, but describe game rules and playing methods in completely different expressions, cannot constitute infringement in the sense of copyright. That is, if the rules, playing methods, and themes of the two games are roughly the same, they do not necessarily constitute infringement. The judge also needs to conduct a comprehensive analysis and comparison of the content and expression of the game.

From the perspective of technological progress and industrial development, game developers with the same theme or playing method cannot, of course, prevent other developers from developing other games with the same theme or playing method. Otherwise, there will be a situation where there is only one game with a certain theme, rule, or playing method, which not only makes players aesthetic fatigue, but also is not conducive to the development and update of the game and the healthy development of the game industry. "Because rules belong to the category of ideas, and expressions are sometimes limited, courts are very careful to analyze whether the same expression is due to the same ideas and limited expressions."

This article believes that the rules and methods of play are generally limited in terms of expression and fall within the realm of thought. At the same time, when ideas and expressions are mixed, combining corresponding elements to distinguish between game rules and rule-related expressions can make corresponding elements fall within the scope of copyright law protection, preventing the protection of ideas from monopolizing game playing methods and impeding the development and innovation of game rules, and also giving due consideration to the incentive and innovative role that protection of original expressions of game rules can play. It should be emphasized that if the specification of the game rules is original, it should be protected by copyright law as a written work.

6.2. Combination of Whole and Split

This article believes that China's existing copyright law should be bold in recognizing the limitations of copyright law in terms of protection methods. After establishing overall protection for online games, components such as text, art, music, and dynamic game images that can be divided into independent works are separately identified and classified for protection.

Generally speaking, interludes and background music in games can be treated as separate musical works, while character modeling, weapon equipment, animal modeling, and some scenes can be treated as separate artistic works. Creative work names, character relationships, storylines, and background introductions should also be protected by copyright law. Among them, character settings and their relationships with each other, as well as plots composed of the occurrence, development, and sequence of specific events, can become expressions protected by copyright law only when they are specific to a certain extent, that is, the selection of game plots, the setting of checkpoints, and the advancement of plots directly reflect the author's unique choices, expressions, and trade-offs.

This protection mode allows the entire online game to be protected, while some of its elements can also be protected if removed, which can maximize the protection of the legitimate rights and interests of all copyright owners of online games.

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