

Study on the Protection of Personality Right of Sound Interests in the Era of Artificial Intelligence

Liangqian Gu*

Anhui University of Finance and Economics, Bengbu, Anhui, China

*867948350@qq.com

Abstract

With the rapid development of voice technology in the era of artificial intelligence, voice, as a unique symbol of natural person, has become increasingly prominent in its spiritual and property interests. The promulgation of the civil Code, so that the protection of voice interests has clear provisions, but only by reference to the application of portrait rights. On the basis of practical and academic research and in combination with the characteristics of sound infringement in the era of artificial intelligence, this paper analyzes the shortcomings of keeping sound interests in reference to portrait rights, explores the specific system design of incorporating sound interests into personality rights, and provides suggestions for the independent protection of sound interests.

Keywords

Sound Benefit; Reference Application; Artificial Intelligence; Personality Right.

1. Introduction

After the promulgation of the Civil Code, there are explicit provisions for the protection of voice interests by referring to the right of portrait. In a simple sentence, the protection of natural person's voice has been officially recognized by law, but there are still many connotations worth studying and thinking about. Therefore, based on the provisions in the Civil Code, this paper compares the differences between voice interests and portrait rights, analyzes the current situation of judicial protection of voice interests through actual judicial cases, analyzes the legal basis of civil law protection of voice interests, and proposes a better protection scheme for the voice interests of natural persons. It should be noted that with the opening of the legal protection of sound in the Civil Code, the interests of sound gradually transition to the right of sound. However, there is no expression of "right of sound" in the current legislative provisions, nor has the concept of "right of sound" been clearly put forward.[1] Therefore, this paper still calls it "sound benefit".

2. The Practical Limitations of Sound Interest Reference

Article 1023 of the Civil Code applies the protection of voice interests to the protection of portrait rights by analogy, which indicates that voice and portrait have similarities and can be protected as a new content of personality rights. However, it is undeniable that there are great differences between sound and portrait, and the infringement of the two rights and interests is also different. Therefore, there are practical limitations in adopting the method of reference for sound protection.

2.1. The Natural Difference between Sound and Portrait

Voice and portrait, as natural characteristics and abilities of natural persons, have distinct personality identifiers and can be perceived by others through auditory organs. In addition, sound and portrait also have property interest in themselves, both can create property

value. Just like portraits, natural people can license their voice to others and make money from it. However, different from portrait itself, sound interest has its own independent object of rights and cannot be compatible with other specific private rights. The specific performance is as follows:

First of all, sound and portrait are not previously the relation of inclusion and inclusion. Portrait is to identify a particular person through vision, which is the visual personality identification, while sound is to identify a particular person through hearing, which is the auditory personality identification. There are differences between the two kinds of objects. In judicial cases, there are some torts that infringe both rights and interests of natural persons. For example, for the purpose of marketing, when businesses use someone's portrait without authorization in advertisements, they often intercept the voice of that person at the same time. People will buy the corresponding goods because of the trust of that person. Without the permission of the person concerned, this behavior violates the voice interests and portrait rights of natural persons at the same time. However, the aforementioned businesses can also use the voice of a celebrity alone in advertising to mislead consumers. If the voice of Bai Yansong, Shi Banyu and other celebrities is intercepted or adapted as the dubbing of commodities, it alone infringes the interests of the voice of the parties concerned.

Secondly, the way of infringement of sound interests and portrait rights is more different. Infringement of the right of portrait can be shown as unauthorized production, use, defacing, destruction and other infringement. But the sound cannot be defaced or destroyed. If the recording of sound products is processed or modified, the copyright of the copyright owner shall be infringed, and the interests of sound shall not be infringed. Therefore, the infringement of sound interests is mostly realized through models, embezzlement, editing and other ways. With the development of artificial intelligence technology, the infringement of sound interests is more diversified. For example, it is possible to put a familiar voice on a virtual character, but without the consent of the person, it is also an infringement of others' voice rights. In order to better protect the interests of sound, it is necessary to protect the collective voice, but it is inadequate to adapt to portrait right regulations.

2.2. The Deficiency of the Theory Research of "Reference Application" Rule

The rules of "reference application" in civil Code are non-mandatory reference norms in terms of the nature of norms. In essence, it is the analogical application of reference to portrait right permitted by law.

The application of the "reference application" rule in the Civil Code is not limited to the provisions of voice interest. Article 1001 of the Civil Code stipulates that the personal right protection provisions of the reference application personality right code are also adopted for the identity right relationship of natural persons arising from marriage and family relationship, if there are no provisions in the General Principles and Marriage and Family Code of the Civil Law. Because the law cannot be exhaustive or exhaustive is too cumbersome, but can not do a blanket provision, so there are often such provisions. The problem is solved by setting appropriate examples, followed by general rules. The standard of "reference application" in the permission of personality right is a means for the legislator to fill the legal loophole in the legislation, that is, to avoid the omission of all provisions and to exhaust the coverage of the items to be regulated, so that the protection of voice interests is clearly stipulated by law.

Although the system of referential application is widely used in civil law, there are few researches on the conditions and specific methods of referential application in theory. It can be seen that the theoretical research status of "reference application" norm is not enough to form a legal situation in judicial practice. Considering that Chinese judges currently carry out the wrong case investigation system, under the circumstance of negative incentive, judges tend to

be conservative when judging cases, which to some extent leads to the sound interests of the parties can not be effectively protected.[2]

2.3. Practical Limitations of Judicial Protection

In order to investigate the actual situation of judicial protection of voice interests in China, through case retrieval, 23 cases of voice infringement were found among the registered disputes, including 12 cases of personality right disputes, 7 cases of trademark disputes, 2 cases of copyright cases and 2 cases of other disputes. This paper focuses on analyzing civil cases, including 11 cases of portrait right dispute and 1 case of privacy right dispute. The cases with reference value are as follows: see Table 1.

Table 1. Views on adjudication of voice interest dispute cases in judicial practice

Time	Cause of action	The referee view
2015	Labor dispute case between natural person Zhao Shan and Hangzhou Songcheng Art Troupe Co., LTD	Sound right and portrait right together, the protection of sound right reference the use of portrait right provisions.
2016	Contract dispute between Beijing Tianhao Shengshi Entertainment And Culture Co., Ltd. and Shanghai Dacheng Network Technology Co., LTD	The use of the right of sound and portrait and the right of music works shall be approved by the owner.
2018	Wu Qinqin and wuhan Hanyang District Construction Bureau, Wuhan Hanyang District People's Government housing expropriation administrative act	"Portrait right", "voice right" and "property right" are all civil rights and interests.
2020	Contract dispute between Beijing Star Rui Tianyi Cultural Communication Co., Ltd. and the defendant Li Ni	Exclusive brokers and agents are required for the use and licensing of performance rights, portrait rights, sound rights, name rights, Copyrights and neighboring rights.

The cases mentioned above occurred before the promulgation of the Civil Code, but the torts also have reference significance after the promulgation of the provisions of the Civil Code. It can be seen that in judicial practice, sound interests have been protected as a right of personality, copyright or privacy, and there are also judgments referring to the right of portrait. Among them, the most representative is the contract dispute case between Beijing Tianhao Shengshi Entertainment And Culture Co., Ltd. and the defendant Shanghai Dacheng Network Technology Co., LTD. In this case, the voice protection of public figure Huang Zitao refers to the provisions of "without the consent of the right of portrait, shall not make, use or disclose the portrait of the right of portrait". In this case, the infringement is directed at Huang Zitao's voice works, which is not inferior to the reference and adaptation. However, what if the infringer does not intercept Huang Zitao's voice, but simulates its timbre to synthesize corresponding content for live connection and attract traffic? This is not strictly public. What if instead of intercepting a single person, the voice of a group is synthesized? At this time, the subject of sound interest has not been determined by law. It can be seen that with the emergence of various forms of infringement, the diversity of subjects and behaviors will lead to "legal blind spot" of "reference adaptation". Therefore, it is necessary to analyze the limitations of real cases in real life and put forward solutions.

3. The Independence of Voice Interests as a Legal Basis for the Protection of Personality Right

3.1. Sound Interests have the Value of Independent Protection

An important reason to emphasize that voice interests should be protected as an independent right is that the voice of a natural person, like portraits, is exclusive and identifiable, and belongs to personality elements. Because natural person's timbre and vibration frequency are different, so everyone's voice is a distinct personality identification, which has both exclusive property, spiritual interests and property interests, and has considerable independent protection value.

First, exclusivity. Voice is an exclusive product issued and enjoyed by natural persons. Voice cannot be issued independently from the subject of natural persons, which also determines that legal persons and non-legal organizations cannot enjoy voice rights. Shi Shangkuan mentioned in his "General Theory of Debt Law": "Voice is a characteristic of personality, which is as important as name and portrait." [3] China's Civil Code defines the subject of protection of voice interests as "natural persons". Through judicial case study, this paper argues that collective composed of natural persons should also be included, and the reasons will be explained later.

Second, spiritual interests. Voice right is a kind of personality interest, and personality interest focuses on the free pursuit of oneself, individual behavior and spirit. The unique voice of an individual is often associated with personal honor and reputation. When the interests of the voice are violated, it is often difficult to recover the spiritual damage to the party concerned. Therefore, money compensation cannot simply be used as compensation.

Third, property interests. There is no denying that sound itself will bring certain property benefits. Natural persons can authorize merchants to use their sound resources through dubbing, which is the most prominent transaction in the entertainment industry. With the breakthrough of various technologies, if businesses want to make use of the star effect of artists, they can even extract and analyze the voice of others through modern intelligent technology without themselves, and finally use A.I technology to imitate their voice to play advertisements and promote products, so as to achieve the purpose of profit. Obviously, this is illegal. But because the legislation has not expressly stipulated, there is no effective remedy way in judicial practice. With the advent of the era of artificial intelligence, we must realize that technological breakthroughs will make sound protection face greater risks, and we need to pay attention to it and take corresponding protection measures as soon as possible.

3.2. The Independent Protection of Voices is Conducive to Maintaining Human Dignity

The Civil Code is a code with Chinese characteristics that embodies humanism. On the basis of summing up the legislative and judicial practice experience of the general Principles of Civil Law and tort Liability Law, the personal Right part adopts the legislative model of "Chinese experience", intending to highlight the value of human beings. [4] "Human dignity" is one of the most important and core contents of humanism.

Due to the natural person's vocal cord vibration, voice parts and tone tone, each sound is not the same, with distinct personal characteristics. As we all know, Wang Xifeng is known for her distinctive voice, "hear the voice before you see it". The voice interests of natural persons are one of the personality interests, reflecting the essential attributes that make people human and different from others. Anyone should respect the voice interests of others, and should not infringe or illegally use the voice of others. The protection of voice means that the law attaches importance to human dignity and recognizes one's social status and value. Like portrait right, affirmation of the importance of sound interest is the core content of general personality right. As in judicial application, if the sound interest infringement, by citing human dignity

interpretation, create a new type of concrete personality right, has not yet included concrete personality right adjustment and supplement of general personality interests, is embodies the respect for the "people", through the legislative process convert sound right to civil rights, it is the embodiment of law for protection of citizens' basic rights, also highlights the "civil code" The spirit of humanity.

3.3. Sound Interests Face Special Challenges in the Era of ARTIFICIAL Intelligence

In the judicial practice to protect the interests of the natural person voice involves more privacy, intellectual property rights and civil rights, and if you do not form a targeted specific provision, with the development of artificial intelligence era, it will cause more and more judicial case the judge can't can depend on, to a natural person's voice will not be able to effectively protect the interests.

From the perspective of the current diversified sound market, commercial embezzlement is common in the infringement of sound property interests, such as the interception of words and phrases of a celebrity and the combination of them to endorse their own products. In addition, imitation fraud and other activities also have new tricks, such as using wechat, Weibo and other social software to collect individuals' voices, using new technologies to clip and imitate them, and sending voice messages to borrow money from relatives and friends. However, the personal interests of voice are often related to the right of reputation, and the use of malicious editing, imitation and other ways to release false information can affect the reputation of an individual. In addition, the sound itself hides a lot of secrets of the body, such as health situation, mental state, individual character, age, gender, etc. Voice messages sent by users on various mobile apps may contain private information such as savings accounts and home addresses, which poses additional potential risks if stolen.

Compared with portraits, with the development of cosmetic technology and plastic surgery technology, people's appearance can change significantly, but the possibility of voice change is relatively low, which also enhances the importance of voice in the identification of personality rights. In a word, the scope of expression of voice is much larger than that of portrait. When the actor infringes the interests of the right holder through imitation of "voice" or other means, it cannot only rely on the way of "referring to the application" of portrait right to regulate, which is also the challenge to be faced by further refinement of legislation in the future.

4. Specific Suggestions on Independent Protection of Voice Interests

In the context of the promulgation of the Civil Code, how to effectively protect the interests of sound. First, it is necessary to determine the independent status of sound interests. Secondly, it can regulate sound interests in civil law by enacting separate laws and taking into account the restrictive situations. This is a necessary response to all kinds of sound infringement in the era of artificial intelligence.

4.1. Path Design for Independent Protection of Sound Interests

In the academic circle, voices for the independent protection of voice interests are getting higher and higher. Some scholars suggest that the independence of voice interests become a new personality right, such as voice right. But for legislative policy and technical reasons, this paper argues that temporarily unfavorable regulation the voice of the natural person is a kind of specific personality right, but can be by enacting laws and regulations, line fill the legislative policy and technical considerations and the legal loopholes, to direct the case released at the same time, provide a reference for practice.

The relationship between civil code and single line law is often graphically described as the pattern of the solar system: the civil code is the "sun", while the single line law constitutes the

planets "revolving around the" sun ": the "planets" are interpreted in terms of the "light" cast by the "sun". A typical example is the second paragraph of the "Preamble" of the Civil Code of Quebec, which states : " The civil code consists of the whole of rules regulating relevant matters, and the letter, spirit or object of these provisions establishes their 'common law' in an express or implicit way in the field of matters regulated by them. In these areas, the code is the basis for separate laws which may supplement or make exceptions to the code." [5] It can be seen that a separate law can make supplementary or exception provisions to the civil code. Just as the Personal Information Protection Law can make supplementary and exception provisions to the Civil Code, it can perfect and supplement the general provisions of the Civil Code. Therefore, by referring to the provisions of portrait right in the individual law and perfecting the "reference application" standard, not only can reduce the legal provisions, avoid the long and complicated law, but also can leave a broad space for the continuous development of the permission of the use of personality right, to protect the interests of sound.

Guiding cases refer to cases issued by the Supreme People's Court or the Supreme People's Procuratorate that have general guiding significance to the judicial trial work of the national court system or the procuratorial work of the procuratorial system. [6] The cases selected are representative judgments made in accordance with the law that can be studied by other courts at all levels. The establishment of case guidance system is to solve the problem of insufficient legal reference in judicial practice or "different judgment of the same case", so as to improve the credibility of judicial organs and judicial authority, and ensure the guiding role of law to the public.

Therefore, although the ways of infringement of sound rights cannot be exhaustively enumerated by amending the code, the elements of the protection of sound interests can be stipulated by means of a single line of law. In this way, the ways of infringement of sound rights can be comprehensively stipulated.

4.2. Constituent Elements of the Protection of Voice Interests

There are more and more forms of infringement of sound interests, and the degree of impact on natural persons is also different. We can discuss from the aspects of subject, object and content and clarify its constituent elements, so as to distinguish different types of infringement.

First, the subject of sound interests is limited to natural persons and collectives, excluding the sounds produced by animals, plants and utensils. According to "civil code" article 2 of the regulation, the rights stipulated in the civil law subjects include natural persons, legal persons and other organizations, but legal persons and other organizations can't become the subject of the interests of the sound because the voice is the ability of a natural person, natural, has the personality attributes, natural person can be the use of sound, editing and other rights granted legal persons and other organizations, but didn't make this grant Organizations and legal persons have the ability to make sound, so the provision of sound interest subject is different from the subject of sound works in intellectual property law. As a collection of natural persons, the collective also has its own unique voice. For example, some artists often sound in the form of a combination. In this case, the collective can become the subject of sound interests, so that the interests of the collective can be guaranteed.

Second, the object of sound interests is sound interests. We can distinguish others by sound, which is the personality identification of sound. When certain types of infringement are committed, it will bring spiritual harm. When the interests of sound are used in commercial activities, the infringement will also cause the property loss of the parties and infringe their property interests.

Third, the protection of sound interests. Natural persons have the right to produce, use, disclose and permit others to use their sound according to law. The right to record a sound may be the reproduction or production of the sound. The right to use the sound and the right to permit

others to use the sound are to protect the natural person's right to use the sound, put the sound into commercial activities, and grant the user the right to use, profit from and dispose of the sound. The right of sound protection emphasizes that the right holder has the right to protect his voice from malicious infringement. When others record or use the voice of a natural person without permission, the subject of the right can safeguard his rights according to law and protect his voice from unauthorized use in commercial activities.

4.3. Restrictions on Legal Protection of Voice Interests

The protection of sound interests shall conform to legal provisions and public order and good customs, and shall not violate prohibitive provisions or damage the legitimate rights and interests of the State, society or a third party. We can refer to the relevant provisions of the Copyright Law to set reasonable limits on the application of sound rights, mainly in the following situations:

First, when the state and public interests require the right holder to make concessions, public officials may need to use the voice of others in accordance with the law when state organs manage public affairs. For example, the public security organs in the extraction of evidence using audio recording, judges in the process of hearing audio video playback, traffic police on duty using law enforcement instruments to record work and so on. In addition, there are some related to the safety of the public, for example, in public places equipped with recording and video equipment, release the voice of fugitives for pursuit, such behavior is directly related to the safety of the masses and social harmony and stability, can be reasonable use of natural person's voice according to law and regulations.

Second, when the development of science, education, cultural learning and other undertakings requires, the use of sound for social education, the spread and development of human civilization. For example, the use of someone else's voice in music teaching does not constitute a violation of sound rights. However, it must be within a reasonable range. For example, in the usual vocal music class, it is normal to collect the students' voice data as research data. If it is used for advertising and other situations, it can be used to gain attention or income. In this case, it is a case of consent but not fair use.

Third, when the public welfare of the news needs, for the authenticity of the news and the voice recorded, broadcast. Because sound is an indispensable factor for news reporting, it is often necessary to record the voice of a natural person in the report, but reasonable restrictions are also required. For example, in some news events, the voice can be changed, but in order to only attract the attention of others and earn traffic, but not to change, causing spiritual or property damage to the parties, then, it does not constitute fair use. Therefore, news reports also need to consider the purpose and motivation of the actor, whether it is necessary for the public interest, and whether it is worth the right holder to give up part of his rights.

5. Conclusion

The personal right part of the Civil Code has realized the protection of natural person's voice for the first time, which means that China has recognized the protection value of natural person's voice for the first time in the legal level, but has not recognized voice interest as an independent personal right. The development of artificial intelligence technology makes the protection of voice interests more urgent, and the voice of independent protection of voice interests is getting louder and louder. Clarifying the independent status of voice interests, perfecting the legal provisions of voice interest protection and guiding cases by issuing and implementing separate laws or guiding cases, is the current positive approach, which not only demonstrates the people-oriented feeling of rule of law, but also obtains the initiative for future judicial practice.

Acknowledgments

This paper is the research achievement supported by the innovation and entrepreneurship training program for college students of Anhui University of Finance and Economics (project approval No.: 202110378146). We are very grateful to Anhui University of Finance and economics for its support and funding.

References

- [1] Meng Xiaoyang, Du Chaofan. Journal of Southwest University of Political Science and Law, 2021, 23 (05) :72-83.
- [2] Yang Lixin, Yuan Xueshi. On the independence of voice right and its Protection in Civil Law [J]. Legal and Commercial Research, 2005(4):2-3.
- [3] Shi Shang-kuan. General Discussion on Debt Law [M]. Taipei: Taipei Rongtai Press, 1978:151.
- [4] Yang lixin. An analysis of the Chinese experience in the Legislation of personality Right [J]. Oriental Law, 2018 (5) : 5.
- [5] Shi Jiayou. How to coordinate the Personal Information Protection Law and Civil Code [J]. People's Forum, 2021(02):92-95.
- [6] Zhang Ruizhi, HAO Xin. On the Effectiveness of Guiding Cases in China [J]. Journal of Shenyang Normal University (Social Science Edition), 2021, 45(01):24-29.