

Research Article

## The Legal Protection of the Microblog's Copyright

Jiaying Zhang

Southwest Jiao tong University Jiao Da RD. Jinniu District, Chengdu 610031, China

### \*Corresponding author

Jiaying Zhang

Email: [1449628728@qq.com](mailto:1449628728@qq.com)

**Abstract:** With the development of technology, microblog came into being. It is one of styles of expressing intelligent thoughts. Once it satisfied the demand of originality, it could be protected by the copyright. Weibo works are based on fault liability. Under the general conditional, the tortfeasor ought to undertake the result of penalty owing to the loss of obligee. In order to protect the copyright of weibo works fully, temporary relief measures could be introduced, statutory damages might be improved and the system of injunction could be applied to the field of weibo works.

**Keywords:** microblog, copyright, tort, injunction.

### INTRODUCTION

Microblog is an innovated creation, we can express our feelings freely on the weibo platform. The pioneer of the microblog is Twitter in the USA, which has begun from Match of 2006. Since then, weibo entered into our life quietly. It is a communication platform where people could share fresh things at any time[1]. In view of the present situation of our markets, Sina Weibo has entered into the public's heart. "Today, did you play weibo?" has become a fashion way of greeting. Comparing to traditional media, weibo has become an unmatched communication media with any other method. Whether for enterprises, governments, celebrities or grassroots, see weibo as a "new darling". Weibo is popular because it has a few words. Unlike the long length of blog, short weibo has 140 words at most. Besides, weibo has the advantage of powerful transmission, high participation and so on. However, weibo also has some disadvantages, such as false information and tort liability. And the most common phenomenon is tort liability.

Existing a "Copyright Law" in the legislation, however, it may place more weigh on traditional works. With the characteristics of digital technology, weibo's copyright could not be given enough relief. Courts have taken quite a different comprehension on the issue of "original standard of the work" in the judicial practice. To some extent, the phenomenon results in poor protection of weibo's holders. Hence, how to protect the microblog's copyright has become a concerning problem. Though scholars focus more on legislative

suggestions of weibo's protection, they concentrate less on the reasoning of the guard, the regretful matter is that they lack the deep thought of original standard. The paper mainly aims at the status of weibo works' protection, concerning on the cause of protection and putting forward the corresponding measures to perfect the legislation.

### BACKGROUND

#### The dispute

Mentioned in the copyright law, a work is the intellectual creation, it refers to the literary, artistic and scientific domain with original characteristic, and could be reproduced in a tangible form. Whether the microblog is protected by copyright or not, scholars' viewpoints are widely divergent on this matter.

Negative thinking holds that: First, weibo has a few words, usually less than 140 words, so it doesn't belong to the intellectual creations, further speaking, it would not be protected by copyright [2]. Second, people have used to use others' works freely for a long time. If the microblog has copyright, it will stunt the recreation of the others and it will not accord with aims of copyright, it inevitably cause various feelings such as resentful. Third, microblog is very entertaining, if microblog is treated as a work, it should get the acceptance of the obligee. Certainly, it does not match with the characteristic of funny, worse better, it is against the long term development of weibo industry.

Positive thinking holds that: First, weibo works demonstrate the labor fruits, so without permission, others could not copy it. Besides, our laws never put forward the the standard number of works' words. Second, microblog has the copyright shows that our country emphasis on intellectual property rights, meanwhile, it demonstrates the positive attitude towards the related international conventions. Third, weibo is entertaining, but it is under the premise that the importance of other's works. Without it, it is impossible that the development of our weibo industry will be healthy.

Of the two opinions, I prefer the latter. However, I suppose that not all of the weibo works have the copyright, only accord with certain conditions do the weibo works have the author's right.

### Setting conditions of copyright

According to the relevant provisions of copyright law, I consider that the conditions should be these as follow:

First, the weibo works shall have a value. Value is the object(object of all kinds of material, spirit and system)could satisfy the need of the subject(such as a person, a class ,a nation and so on).Therefore, weibo works should have certain purpose, that is, they can satisfy our demands, especially for fullfilling our mind. The desires of people's mind are wide-ranging, such as a great literature, a funny joke and so on.

Second, the weibo works could be expressions instead of thoughts. The expressions refer to the feelings tending to present themselves in certain style. The thoughts refer to the viewpoint, theory, principle, conception and other ideological contents. In brief, they are different between external and internal. The reason for copyright's attitude may be that it is aiming at promoting the knowledge of society.

Third, the weibo works ought to be originality. What is the originality? It consists of two parts: independence and innovation. The independence is refer to that the work is created by author himself. At this point, no dispute among countries. The innovation is referring to the work that has a certain level of intelligence creativity. However, the height of "innovation", different countries have different practices and China doesn't have the specific defined.

How to identify the microblog' criterion of originality? In general, the standard of civil law system is higher than Anglo-American legal system. Initially, the Anglo American law system originates from pragmatism, most of them pursue the "sweat of brow", that is, labor creates value. Though "sweat of brow", in a manner, reduces the phenomenon that using others'

labor fruits freely, it will inevitably hinder the other's creation when the formers's facts and figures are necessary. It is against the primary principle of the copyright law. The fact that the law would encourage the later generations stand on the shoulders of the giants. Especially, the principle of the sweat of brow is not meet the standard of Berne Convention. Berne Convention do not use the word "originality" directly, however, the creations of the mind as objects of Convention. It implies that the work should be the results of intellectual activities rather than the labor's fruits. Nowadays, there are few countries adopt the standard of the "sweat of brow" [3].

Not only do the civil law countries require the creation by independent, also demand a creation with high standard. On the one hand, China's legal tradition closes to the civil law system, on the other hand, both the common law system and civil law system are introduced in China. Most scholars think that China's standard of works is higher than the common law countries, but lower than the civil law system. Hence not all of the weibos are works, the weibo work ought to have several conditions, for example, it is one's own independently fruits, rather than the copy and the plagiarism. Furthermore, the weibo work would not just state the facts, but also need have art processing to achieve the height of creation.

### RESEARCH METHODOLOGY

The methodologies of this paper are comparison and induction. The tort is expressed as the civil punishment of infringement. A person infringes others' property or personal rights and interests, shall shoulder civil liability. Therefore, only by understanding the infringement act, can research clear the civil liability of weibo works.

### Characteristics

Duing to its different characteristics from traditional work's copyright, weibo work has its own values.

First, the tort is instant. It would spread quickly by using the power of network from the time tortfeasors made the infringement. Through the unlimited replication, the hurt of weibo's author would expand and spread. Even if do after deleting behavior, it is too late to protect the author.

Second, the tort is cross-regional. Weibo's replicated behavior is unlimited by space and time. To some extent, the jurisdiction would be complex because the weibo works' infringement always occurs in the network environment.

Third, the tort is difficult. When realizing the tort is exposed, the infringer would delete the works

immediately as for covering up the evidence, so it is difficult for the author to search for the evidence. Besides, the copyright law in our country is imperfect, so mostly, the rights of the author fail to be protected by the law.

### **The familiar torts**

Weibo is the product of technology. In order to protect the rights of weibo's author, it is unreasonable that tort includes offences. The most familiar torts of weibo's copyright are as follows:

First, weibo users' tort. The infringement among weibo users is relatively common. The specific performance are followed: firstly, without the permission of the author, torfeasors publish the works. The publication's rights refer to the right that bringing the work to the public. If the author public the works through the weibo platform, and just set the works access to self only or can be seen by a few and specific friends. So these works would not regard as the copyright works. But the world is full of wonders, if someone destroys the setting protection deliberately by other network tools and make the weibo works could be seen by anybody no matter wherever you are, so on the one hand, this kind of behavior infinges upon the author's privacy, on the other hand, it violates the publication rights of authors. Secondly, distorting and tamper others' weibo works. That, in fact would misunderstand the feelings of the original work when others read the distorted works. The conduct of distortion and tampering is a violation of the author. What is more, the author's reputation would be ruined by the illegal behaviors. Thirdly, plagiarizing the others' work. The weibo works embody the hard work of the author, it also has the property value. One can find there is no fundamental difference between the intelletual property and material property. The behavior of the "free rider" would be the atmosphere of unearned, weak the enthusiasm of creation and hinder the development of weibo industry. Hence, we ought to respect others' weibo work, avoid plagiarizing.

Second, Internet platform providers' tort. It is the platform where people could exchange information. Its torts are analyzed, including: Firstly, after receiving deleting, shielding and broking links by the author, however, it fails to take necessary measures leading to the damage expansion. Secondly, Internet service providers do not take any measures when they know weibo users are infringing upon others' righrs and interests. Both of the behavours would be illegal, the providers would bear some responsibility.

Third, media's tort. Information spreads quickly is the common feature of the media. Excellent weibo works has commercial value, too. Therefore, literary and art workers should respect others' work,

learn the basic knowledge of law. As a result, the unnecessary disputes could be avoided and the maximization of effectiveness could be realized.

### **Subjective fault**

The subjective fault, refers to the state of willfulness and negligence. Willfulness is that the actor has already foreseen its own damage consececes and let the result happen. Negligence is that duing to the unreasonable duty of care and leading to the serious damage.

Some scholars hold that willfulness is aiming at pursuing the economic benefits. Therefore, under limited words, if it is not to financial gain, but to share, so it is not a tort. At first sight, there are some rationalities, however, it ignores some important features that weibo has more personal characteristics. Non-economic purpose such as revenge and prank may be possibe in our society, if someone torts or tampers the work, all of these behaviors could be regarded as torts. Hence, willfulness is not limited as a purpose of financial gain.

Negligence includes "careless and inadvertent negligence" and "negligence with undue assumption". The former refers to that the infringer ought to have foreseen his behavior would encroach upon others' rights, but owing to ignorance, he fails to foresee the damage. The latter refers to that the infringer have foreseen his conduct would hurt others, but he is too confident to realize it. As we can see, the word "negligence" is so abstract that could not conduct the juridical practice. I suppose that we can learn from the "Hand Formula" as the standard of the juridical practice. Judge Hand agreed that the negligence has three variables, that is, P is probability, L is damage and B is the cost of prevention. Fault liability depends on when B is less than L times P, i.e.  $B < PL$ . If the preventable cost is lower than the losing cost of others, so the defendant has a duty to take some preventive measures. If the indictee fails to take any steps, so he would regard as the guilty. Of course, we could not determine the nature of behavior only by economic analysis. After all, the weibo works have certain personal attributes. Anyhow, when adjudging a case, Hand Formula could be used as an important reference factor.

### **Damage consequence**

Damage consequence refers to that the decreasing of property and non-property. Damage consequence is one of the elements of liability. It is determined by the nature and social function of tort liability law [4]. One of the functions of tort liability law is to make up the loss. So where there is a damage there is a remedy.

Determinacy is the characteristic of damage. So some scholars consider that damage should be the happened facts. It is relatively reasonable for the property infringement liability. The existing of realistic damage is convenient for the ascertainment of damage. But considering for the characteristics of the weibo works and to have a better protection of the authors, the time point of the damage could be extended to the time that something is about to happen. It is not only conforms to the compensative function, but also accords with the preventive function. To my point of view, the value of preventive function is more than the compensative function, the reason is that it is timely to avoid the occurrence or expansion of damage and save the judicial resource.

### **Causality**

There are several theories about how to determine the causality. Most of the civil law country use the correspondence theory of causal relationship. Professor Shi once summarized a formula: In the eyes of common persons, this kind of result would frequently happen when making a specific behavior, this exists a causality[5]. I suppose that this theory could apply to the field of weibo works. For example, when the provider receives the notification of deleting, blocking and breaking the links, it fails to take any measures. According to the rule of thumb, we can infer that there is a causal link between the behavior of provider and the loss.

## **RESULTS AND DISCUSSION**

### **The necessity of perfecting legislation**

Limited by its own shortcomings, the law is always lags behind the society. With the development of network technology, the hysteresis is more obvious. Technology has an important influence on the law, as for the domain of legislation, technology plays an important role in perfecting the content of the law. Meanwhile, weibo works is different from traditional works of literature and art, it is with the characteristic of network technology. The existing copyright law focuses on the adjustment of traditional works. Obviously, it could not protect the weibo works' copyright fully. Considering these factors, the copyright law demands constant change and adjustment.

Because of the limitation, our legislation should be more open. With an open mind, more legal system of western would be accepted by our country. In the long term perspective, our law must be open to the outside world and absorb in all the available systems of law. Review the history, Qing Dynasty was very cliquey and elitist. It is pity that China lose the opportunity to access the advanced legal culture, and in the end, our country is lagging far behind the advanced country in the legal system. Nowadays, China has gradually strengthen the exchange of intellectual

property's legal system with other countries. It is glad to see that China has signed several international conventions such as Bene Covention, Trips and etc. Therefore, with an open mind, it is possible that China could enter into the advanced legal country.

### **Specific proposals on legislation**

First, preservation could be applied before torts. Before launching a suit, it is necessary that taking some measures to avoid the forthcoming infringement on the demand of the weibo works' authors. It could deter or reduce the occurrence of damage[6], so it is very benefit for the author of the weibo works. However, the rule of preservation before the action is too abstract to be carried out. Therefore, there are few judicial decision of property perservation before litigation made by court, so the author of the weibo could get few legal protection. Hence, in the future, It's necessary for the intellectual law to clear the specific operating rules. It is generally admitted that with perfect rules, the author of weibo could get better protection. Besides, comparing to traditional copyright words, weibo works exist in the form of electronic storage. It is easy to modify the proof, as a matter of fact, the evidence's authenticity may not persuade the interested party. To some extent, it could cause the phenomenon that the difficulty of quoting and identification. Considering for the shortcomings, it appear to be a significant breakthrough in the protection of weibo works when perfecting the system of proof. Hence, the crucial aspect of legistation would be perfecting the legal system of preservation before the action.

Second, raising the standard of compensation. China's law of copyright have learned several legal systems from western country, as a result of active learning, China has stipulated three different ways of calculating the compensation, i.e. the actual loss of the obligee, the realistic profits of the infringer and the privileges encroach right. It is very pity that China's current standard of compensation is so low that could not make up for the loss, e.g., according to the law of publication, the original work's remuneration ranges from 30 yuan to 100 yuan. Such standard of compensation could lead to the phenomenon of malicious tort. Therefore, on the one hand, we should improve the standard of the compensation, and one the other hand, we ought to consider for the mental damage depending on the purpose of the tort and the damage of the victim.

Third, according to China's law of copyright, the court could confiscate the illegal incomes, reproduction and the tools. However, the carrier of weibo mostly is electronic storage meduim. Besides, the tool of the illegal activities generally is application software. Therefore, the judicial authority could not sequestrate any actual material. In the judicial practice,

it is customarily regard the computer as the illegal tool. Meanwhile, the computer is seized. Such practices have differences with which many people, including myself, do not agree. Hence, the copyright law could be revised. Furthermore, the objects of the confiscation should be refined. As for doer whose behavior is particularly badly, it is reasonable for the law to take example by system of injunction, i.e. prohibiting the infringer contacting with the weibo at certain time and place.

## CONCLUSION

Microblog could narrow the distance between the persons. Without perfectly legal protection, however, the tort of the weibo works could grow explosively. One thing would be explicit is that under certain conditions weibo works could have copyright. Through analysing the tort liability of microblog, the current copyright law could be further revised. Especially, the standard of the compensation could be raised and the protection ought to be extended to the preliminary temporary injunction. Because of limited knowledge, a few issues have been studied, the legal protection of weibo works have a long way to go. At present, the copyright law is amending, looking forward to a better protection of microblog works.

## REFERENCES

1. Lowe N, Nicholas A. A precarious business. *Communication World*. 2012; 29(6): 30–32.
2. Yuhui W. Research on the Copyright Protection of Microblog. *Journal of Northwestern Polytechnical University*. 2012; 32(4):28-30.
3. Qian W. *Guide to Intellectual Property Law*. China Renmin University Press. 2011.
4. Liming W. Some Problems in the Making of Tort Law. *Contemporary Law Review*. 2008; 22(5):3-13.
5. Shangkuan S. *Law of Obligation*. Taiwan Rongtai Press, 1978.
6. Adermon A, Liang C. Piracy and music sales: The effects of an anti-piracy law. *Journal of Economic Behavior & Organization*. 2014; 105: 90–106.