The Exclusion of Illegal Evidence in Computer Software Copyright Infringement

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ABSTRACT

Through the introduction of the overall value of computer software copyright, this paper distinguishes the copyright of computer software from other literary works, analyzes and the form of computer copyright infringement, and summarizes the manifestation of illegal evidence in infringement case litigation. This article leads to the exclusion of illegal evidence in software copyright and the application of thinking.

KEYWORDS

Computer software, Copyright; Infringement, Illegal evidence.

INTRODUCTION

In the 21st century today, the computer network has become the infrastructure of our daily life, and even the necessities of our daily life, as a "viscera" within the computer, computer software is the necessary tool for us to use the computer. With the popularity of computers in-depth people's daily life, software development is constantly upgrading, the market continues to accumulate the software, and software copyright has more and more attention by the developers. As the forms of software obey the function, in the software development process, there will be similar computer software functions, similar to the phenomenon of illegal copying, which led to the copyright infringement cases is common, and in the case of litigation in the process of illegal evidence of evidence, exclusion also led to people's deep thinking on computer protection.

COMPUTER SOFTWARE COPYRIGHT

Copyright, also known as copyright, is the author of the creation of their works according to the law to enjoy the exclusive rights. Computer software copyright refers to the computer software developers or other rights holders in accordance with the "People's Republic of China Copyright Law," the relevant provisions of the development of software to enjoy exclusive rights. This right can be divided into two types: one is personal rights, including the right of authorship, right of publication and modification; the other is property rights, including distribution rights, lease rights, reproduction and translation rights. Software copyright is one of the civil rights, with all the common features of civil rights.

Computer software’s developers include natural persons, legal persons or other organizations. The copyright owner refers to a natural person, legal person or other organization that enjoys the copyright of computer software. In other words, in general, computer software developers and the owner of the copyright are unified, but in
special circumstances, they are separate. Confirm the ownership of the software works, and cannot simply equate the software developer with the software copyright owner. In order to promote the development of computer software technology, while maintaining the interests of the public to protect the normal use of the software, the relevant national laws on computer software copyright restrictions, including:

a). User rights. A valid copy of the software has the right to install the software into a computer and other information processing equipment as needed; to back up a copy to prevent damage to the copy. Copies of these backups may not be used by others in any way and are not responsible for the destruction of the backup copy; in order to use the software for the actual computer test environment or to improve its functionality, performance and modification; however, except for contracts and other Outside the Convention, without the consent of the software copyright owner, shall not disclose to any third party the use of the software.

b). Similar software. Due to available resources or limited means of expression and the existing software composition is similar to the kind of behavior in the legal sense does not constitute a copyright infringement.

c). Reasonable use. In order to study and study the design principles and ideas of the software, through the installation, operation, transmission or storage software, etc. before using the software, without the permission of the software copyright owner. The

ANALYSIS ON THE FORMS OF COPYRIGHT INFRINGEMENT OF COMPUTER SOFTWARE

Compared with the advanced countries in the West, China's computer introduction time is relatively late, leading to China's computer software protection legislation started late, coupled with China's relatively backward computer software industry, whether in the actual operation of the computer or legislative protection work, The lack of relevant experience. However, it is also because of the late start, by drawing on foreign successful computer software protection law, so that China's software protection law starting point high, less detours. Therefore, we use computer software as a copyright law to protect the object, rather than choose other laws to protect the computer software.

From the consumer's point of view, as shown in Figure 1, in the case of consumer consumption budget unchanged, the number of pirated software X1 than the use of genuine software X2 number, that is, the equivalent curve from W1 rose to W2, the consumer can rise from the original consumption X1 to X2, the equilibrium points from A to B, we can see that the total utility level of consumers improved significantly, so more willing to use some pirated software as a substitute. This series of data shows that the piracy software and genuine software with the contradiction between consumers, the existence of the contradiction led to the software copyright and ownership of the dispute, directly or indirectly stimulate a lot of popular computer software infringement cases.
Computer software infringement is generally divided into two categories: one is the computer software program elements or structure of the copy, which is easier in the card to be real-time verification, because the copy is a complete plagiarism, as long as the same content, that constitutes a tortuous behavior. The second form is to copy some of the software code according to some rules and order of the computer algorithm. In this case, the court will usually check the defendant in the judgment whether the theft of adequate software expression. In practice, this problem is more complex, more difficult to judge, because the computer software product itself technical characteristics, through the copy of the number of content or how many words can be regarded as plagiarism infringement behavior, and no clear provisions. Of course, the more the number of copies, the easier it is to prove that it is a violation of the original, but to what extent can be identified as infringement, judicial practice, there is no clear answer. From the number of copies, the criteria currently adopted by most courts include:

a). Contact adds. According to this rule, any form of copy production will be deemed to be an infringement as long as the act of contact is found. However, this view has some limitations, because the neglect of the two software works between the existence of "substantive" similar, and the scope of protection of computer software extended to the computer program contains "thinking".

b). A two-step analysis of a computer software program is necessary. First, the court must confirm whether it is the same in the computer software program; if not, do not constitute infringement; if the same, then the next step will try to verify the form of computer software program to test to see if there is a substantial similar.

c). Widely accepted stacking criteria. According to this standard, the plaintiff must prove the defendant: ①. The defendant in the completion of his software products without permission to "use" the plaintiff to enjoy the copyright of the previous software works; ②. The defendant's software work is a mixture of recycled products, that is, the use of the plaintiff software products and the contents of his own development of the contents of the overlapping copy. This criterion focuses on two software products between the "qualitative and quantitative similar", is the actual use of better judgment method.

Through the experience of computer software infringement cases, identify computer software infringement, direct and effective criteria are: real similarity and contact. The so-called real similarity refers to the similarity of the two software works in the organizational structure, the processing flow, the data structure, the output mode and the input form. In the actual case to determine whether the software works similar criteria is: whether the accused computer software product program is similar to the plaintiff. Computer software programs are essentially similar to two categories:
a). The similarity of the text component is determined by the percentage quoted in the program code.

b). The similarity of non-literal components emphasizes the similarity between the two software as a basis for determining the similarity of the two software.

According to the software copyright infringement data show in recent years and the "People's Republic of China Copyright Law" regulations, the computer software copyright infringement is divided into the following ten cases:

a). Without the permission of the computer software copyright owner, unauthorized release or registration software. The computer software copyright owner has the right to publish the software. No person may publish any particular software work without the permission of the copyright owner. If the law is implemented, it constitutes the copyright and registration right of the copyright owner.

b). Write or register someone else's computer software as your own software. The composition of such infringement is mainly the behavior of the perpetrators of plagiarism software developers, the software developed by others fake for their own works signed or registered. Such acts mainly make the copyright, the right of authorship and the right of registration of the copyright owner.

c). Without the permission of the author, may not publish or register with others, or computer software as a separate software release, as a cooperative development of computer software copyright or registration, by all developers to exercise. If no other developers agree to publish or register their own original works of computer software, constitute infringement.

d). Sign or change the signature of someone else's computer software on someone else's computer software. This behavior infringes the copyright of the copyright owner and the copyright owner. The difference between this behavior and the second act is primarily the behavior of published software works.

e). Without the permission of the computer software copyright owner, to modify and translate the software. This act is the right to modify or translate the right of use of the copyright owner or his licensor. The creator agrees with the copyright owner or the copyright owner and enjoys the copyright. However, if the software developer to accept the unit commissioned to enhance the computer software to complete, and accept the development of similar software by Party B, only one unit commissioned or submitted to complete the second unit software issued changes, such acts also constitute infringement.

f). Without the permission of the copyright owner, copy or copy part of the copyright owner's computer software. This behavior violates the right of the copyright owner to use the copyright. At the same time, in the computer software copyright is negotiated by the parties to the transfer of the agreement, the software developer without permission to copy the software, otherwise it will constitute infringement of this article.

g). Without the permission of the copyright owner, the copyright owner shall publish, rent and transfer to the public through the information network. This behavior infringes the right of the copyright owner to distribute, rent and disseminate information.

h). Without the permission of the copyright owner, the copyright owner shall take technical measures to protect or protect the copyright of the computer software. This act violates the right of the copyright owner to protect the integrity of the work.
i). Without the permission of the copyright owner, deliberately delete or change the computer software management of electronic information rights. This behavior infringes the right of the copyright owner to protect the integrity of the work and modify the rights of the work.

j). Without the permission of the copyright owner, transfer or allow others to exercise the copyright owner's computer software copyright. This act violates the right of use and transfer of the copyright owner.

Illegal possession of computer software, without the consent of the copyright owner or its legal transferee, may not modify, translate or reproduce the goods, or to the public release and display software, but cannot handle any third-party software licensing or transfer matters, otherwise it constitutes infringement.

THE EXPRESSION OF ILLEGAL EVIDENCE IN COMPUTER SOFTWARE COPYRIGHT INFRINGEMENT LITIGATION

Illegal evidence is evidence that does not conform to the legal origin, form or violation of the proceedings. In other words, in evidence of infringement, the evidence obtained by this channel is regarded as illegal evidence if the method of collecting evidence violates the lawful rights and interests of others or violates the relevant provisions of the law. Copyright belongs to a civil right; its own nature and civil rights have the same characteristics. Therefore, in the computer copyright infringement litigation in the case of illegal evidence of the specific performance of the following five:

a). Evidence of formal offense. The evidence obtained by the defendant in respect of the conduct or order in contravention of the relevant provisions of the laws and regulations.

b). Evidence of violation of statutory authority and procedure. That is, in the course of the case the defendant deliberately abuses the job will go beyond the power, in violation of legal decisions, processing and access to "evidence."

c). Illegal means or means to obtain evidence.

d). Evidence obtained by unlawful evidence.

e). The evidence itself or the means and conduct of the evidence are contrary to social morality and social public interests, and the consequences are the same as for the case of illegal evidence. According to the exclusionary rule of illegal evidence, there is no evidence of any form of any of the five forms of expression, and cannot be used as a basis for the facts of the case in the course of the proceedings.

THE APPLICATION OF ILLEGAL EVIDENCE EXCLUSION IN COMPUTER SOFTWARE COPYRIGHT INFRINGEMENT LAWSUIT

For a long time, in our civil litigation, the illegal evidence of the discharge rules did not get a specific specification and standards. Although in China in 1979 and 1996, "Criminal Procedure Law" has been raised against the illegal evidence of the attitude. But the relevant provisions are only a declaration of the provisions of the law; there is no clear evidence of evidence of the provisions of the evidence. Until the tenth century since entering the new century, the "three houses" finally realized the vacancy of this law, so drafted and introduced two provisions: "on the handling of criminal cases to exclude illegal evidence of a number of issues" and "On the death penalty case to review the evidence to determine a number of issues." These two provisions of
the proposed really established the illegal rules of exclusion of our rule, but also to a certain extent make up for the legal gaps, which undoubtedly become a breakthrough in the history of litigation system. But this is only related to criminal cases, for other areas is still a blank.

In view of the illegal evidence in the IT sector case to exclude the problem, in 2001, "Founder v. High surgery case" to the judicial circles wake up the alarm, once the "Founder v. High surgery case" put the "trap evidence" fried boiling the judicial community has also embarked on a heated debate about the nature of illicit evidence, which itself includes objectivity, relevance, legitimacy. The reason why illegal evidence is called "illegal" because it is not legitimacy itself, the evidence itself is the basis of legal review and judgment, if the illegal evidence belongs to the evidence, the loopholes in the law itself cannot justify. In fact, this view confuses two different evidence concepts and procedural evidence. Evidence of the existence of the previous litigation stage, requires objectivity and relevance of the material as evidence, but the evidence itself has objectivity, relevance and legitimacy, and ultimately can be the foundation, which is to obtain the necessary conditions for the recognition of judges and the law. The Litigation evidence is the product of legal adjustment, it is precisely because of this, litigation evidence can be accepted by the law, and thus have legal benefits, as the basis for the facts of the case. In litigation, all evidence must be translated into litigation evidence, only to have legal significance. As long as the public admit this, the public cannot deny the legitimacy of the evidence.

In most of the computer software copyright infringement cases, in order to determine whether the infringement, need to be commissioned identification. First, identify the object. The plaintiff has the right to the computer software code with the defendant's infringing software code. Second, the identification process should be removed from the well-known information, which is known to those skilled in the art. Taking into account the protection of human rights and the realization of procedural justice, most countries prohibit the collection of illegal evidence, illegal rules of exclusion is specified in its procedural law. Illegal evidence exclusion rules are first established in criminal proceedings and gradually extended to civil litigation. This means that the judge excludes illegal evidence according to law and cannot be regarded as a rule to determine the facts of the case. Illegal evidence exclusion rule is evidence of evidence ability or qualification problem, that is, the evidence of illegal evidence becomes a problem, the legitimacy of evidence is the core competitiveness of evidence, only legal evidence can be converted into litigation, can become real evidence. Evidence by illegal means not only violates the provisions of the law, but also may violate human rights and other social interests protected by the law, should be prohibited by law, and the evidence obtained should also be excluded to prevent the occurrence of such acts. But paradoxically, the value of illegal evidence for the existence of the possibility of finding the facts, coupled with the computer software itself is a virtual product, has a certain virtual nature, if the absolute exclusion of these evidence into the litigation, which will seriously affect the case Facts that are not conducive to the realization of justice. Therefore, due to the balance of value conflicts, in the process of resolving copyright infringement cases of computer software, the principle of exclusion of illegal evidence should be excluded and the corresponding exceptions should be specified.
SUMMARY

Computer software, as a service tool in high-tech industries and even broader fields, has brought tremendous convenience to society while promoting the development of science and technology. In the computer software infringement litigation, the reasonable exclusion of illegitimate evidence should protect the rights and interests of computer software. This is both an act of respecting and protecting intellectual property contained in computer software and a great pass on the positive energy of society. Computer software development requires a stable and healthy environment, the only way to promote the technological optimization, innovation and vigorous development of the software industry.

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