

Study on the Legal Nature of IPTV Watchback Service

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Abstract: Under the background of “triple play”, IPTV and other business models utilizing emerging broadcasting technologies have emerged. At the same time, infringement lawsuits related to IPTV television viewing have occurred from time to time, seriously affecting the healthy development of the IPTV industry. In these cases, the controversy focuses on determining the legal nature of the TV viewing service, which has become an important part of the IPTV copyright infringement litigation. Through analysis, it is found that the root cause of the differences in the legal nature of TV viewing services lies in the lagging legislation caused by the development of technology, and the game of interests among different subjects. It is justified to clarify that TV viewing service is categorized into the scope of broadcasting right adjustment.

Keywords: Television Viewing; Copyright Disputes; Broadcasting Rights; Information Network Communication Rights

1. Current legal characterization of television viewing services

1.1 Current Legal Characterization of IPTV Watchback Services

IPTV is a product of the development and convergence of new technologies, and the services offered differ from the characteristics of traditional television. The development of technology has also enabled IPTV to offer users more service features, including live broadcasting, time-shift, watchback and on-demand. The live and on-demand modes are basically uncontroversial, while the most distinctive and controversial IPTV feature introduced by the new triple-play technology is the watchback mode. On how to define IPTV watchback, there is currently no definition in the theoretical and practical circles, IPTV watchback is not a legal concept, the author from the technical level of IPTV watchback for a simple explanation: IPTV watchback mode is to cache the live channel signal for a period of time, generally 3 to 7 days, this cache is complete, uninterrupted, slow-moving, cache -delete-cache-delete, continuously rolling forward. Therefore, there are four characteristics of IPTV watchback: dependent on the channel live; the provider provides a complete viewing back of the whole channel; limited time, usually 3 to 7 days; and it must be a subscriber who has installed an IPTV TV viewing terminal to view it.

1.2 The “broadcasting rights doctrine” for IPTV Watchback Services

Over From the perspective of industrial policy, IPTV business is a typical new business form of broadcasting TV for triple play, which belongs to broadcasting TV business, and its construction and management must comply with broadcasting TV policies and laws and regulations. IPTV watchback mode is essentially to utilize the network of telecommunication operators, and create a special line for IPTV TV program directional transmission, which is not detached from traditional cable TV business. In nature, it is not detached from traditional cable TV, still belongs to cable TV business, and IPTV viewing mode is in line with the national policy of three-network convergence as well as relevant regulations. From the legal point of view, the main body of IPTV viewing back is the broadcasting and television organization, which limits the viewing time of the users; due to the directional transmission of the private network, the access rights of the users are limited, and it is not open to the public; in terms of time, it only lasts for 3-7 days, and in terms of location, it is limited to the places where the IPTV private network terminals have been installed. From the perspective of balancing interests, the dissemination behavior through information network technology should not be fully included in the scope of the right to disseminate information network, but should take into account the implementation of national industrial policy and the protection of public interests, and take into account the balance between the two, so as to reasonably limit the scope of the right to disseminate information network of the copyright owner. From

a technological point of view, IPTV is the result of technological progress, and the problems brought by new technologies should be treated with tolerance and neutrality, and all kinds of technologies should be given equal treatment and a fair chance to compete in order to promote the development of new technologies. Therefore, the IPTV watchback mode does not fundamentally change the one-way nature of the traditional broadcasting and television communication and the passivity of the audience to accept, and does not belong to the typical sense of the scope of the right to disseminate information network. The Guangzhou Intermediate People's Court based its decision on the same principle as the Hangzhou Internet Court, involving the specificity of the subject, the characteristics of the act, and the analysis of the legitimacy of belonging to the act of broadcasting. [1] Such decisions have held that IPTV watchback falls within the scope of broadcasting rights. Although this conclusion belongs to the view held by a few judgments in the judicial practice, its analysis of industrial policy, technology neutrality, and secondary use of broadcasting right has attracted the attention and discussion of the industry, while this view is recognized and supported by the IPTV industry, and thus has become a representative view.

1.3 The “Right of Information Network Dissemination” of IPTV Watchback Service

According to Prof. Wang Qian, time-limited viewing via IPTV is only possible within 72 hours, but users can choose their own time and place for viewing works on demand during this period.[2] Zhang Weijun argued that IPTV playback is not one of the three acts controlled by the broadcasting right in China, and that IPTV playback meets the characteristics of public access to works at a time and place of the individual's choice, which is controlled by the right to disseminate information networks.[3] Zhu Jianjun also holds a similar view and believes that the way the works are obtained through the on-demand service belongs to the typical “peer-to-peer” method of “interactive distribution”, which belongs to the behavior of information network dissemination and should be subject to the adjustment of the law of information network dissemination.[4]

Each of the above views and conclusions has its own merits. In contrast, the view that the legal nature of IPTV viewing falls within the scope of the right of dissemination of information is somewhat simpler in its reasoning without analyzing the differences between IPTV viewing and the acts governed by the ordinary right of dissemination of information and the reasons why these differences have no bearing on the argument that IPTV viewing falls within the scope of the right of dissemination of information. Nevertheless, judging from the current judicial practice, the view that IPTV playback belongs to the scope of the right to disseminate information network is dominant.

2. The Roots of the Divergence in Determining the Legal Nature of IPTV Watchback Services

2.1 The paradoxical conflict between legislative lag and technological development

On November 11, 2020, the Copyright Law completed its third amendment. After the third revision of the country's Copyright Law, its Article 10(1)(11) has made significant adjustments to the definition of broadcasting rights. The newly stipulated broadcasting right reads: "By wire or wireless means and through loudspeakers but does not include the right provided for in the twelfth item of this paragraph^① ", which is one of the most highly publicized amendment provisions in this revision of the Copyright Law. By placing "the right to publicly transmit by wireless means Dissemination of broadcast works^② " The change to “public communication or retransmission of a work by wire or wireless means” implies that the modified broadcasting right will regulate the initial act of communication by any technological means, including radio signals, wired cables, and webcasting, which were widely used before, and that the future emergence of new communication technologies will not be sufficient to regulate the right to broadcasting. In the future, new types of transmission based on new technologies may also be regulated. Secondly, the broadcasting rights provision lists specific types of conduct, and then adds an exclusionary provision: “but excluding the rights provided for in subparagraph (xii) of this paragraph”, which is intended to make a clearer distinction between broadcasting rights and the right to disseminate information networks in the legislation. Without this

^① Article 10(11) of the Copyright Law of the People's Republic of China (2020) provides for the broadcasting right, i.e., the right to publicly communicate or retransmit a work by wired or wireless means, as well as the right to communicate to the public a work that has been broadcasted by means of a loudspeaker or other similar means of transmitting symbols, sounds, or images, but does not include the right provided for in the twelfth item of this paragraph.

^② Article 10, item 11 of the Copyright Law of the People's Republic of China (2010) provides for the right to broadcast, i.e., the right to publicly broadcast or disseminate a work by wireless means, to disseminate a broadcast work to the public by means of wired dissemination or retransmission, and to disseminate a broadcast work to the public by means of a loudspeaker or other similar means of transmitting symbols, sounds, or images.

provision, the general expression “by wired or wireless means” would literally include both interactive and non-interactive acts of communication, resulting in an unclear boundary between acts controlled by the right to broadcast and those controlled by the right to disseminate through information networks, and the addition of this expression makes it clear that the right to broadcast does not cover the types of acts regulated by the broadcasting right. The addition of this expression makes it clear that the right to broadcast does not include interactive communication among the types of conduct regulated.

In this amendment to the Copyright Law, the definition of the right to information network communication has also been adjusted from “the right to make works available to the public by wired or wireless means, so that the public can access the works at a time and place of their choice” to “the right to make works available to the public by wired or wireless means, so that the public can access the works at a time and place of their choice”, i.e. deleting ‘works’ and “individuals” in the first and second half of the sentence respectively. However, this change has been misinterpreted, and it has been argued that it is intended to include deep links in the regulation, as “making available” may cover the “user-perceived” effect of deep links. However, this argument lacks merit: the legislative notes do not refer to deep linking, and the change deviates from the “making available of a work” formulation in the WIPO Copyright Treaty. Although the change is consistent with Chinese language practice, it is technically unnecessary given the longstanding controversy over the characterization of deep linking, which is likely to lead to unnecessary debate and additional costs that outweigh the benefits of textual refinement.[5]

The communication behaviors regulated by the amended broadcasting right are still non-interactive, i.e., one-way, linear, and time-controlled by the communicator, and the communication behaviors regulated by the amended right to disseminate information networks are also still interactive, i.e., two-way, non-linear, and time-controlled by the user, which is not substantially different from the provisions of the law prior to the amendment. However, this change in the definition of broadcasting rights solves the problem that the previous Copyright Law could not cover similar acts such as webcasting. Instead of using touting rights monies when characterizing new types of non-interactive communication acts, courts can directly include them in the scope of broadcasting rights for regulation. However, the newly revised Copyright Law still fails to address the legal characterization of TV viewing back services. Television viewing back service has a certain composite nature, which is different from the linear transmission under the traditional broadcasting right, in which viewers do not need to watch the program according to the fixed time arranged by the TV station, and have the characteristic of choosing the time independently; it is also not completely equivalent to the completely independent choice under the right to disseminate the information network, because the scope of the program that can be viewed back is limited by the TV station, and is not as arbitrary as the vast amount of resources on the network. According to the dichotomy, according to the definition of traditional broadcasting rights, it does not meet the characteristics of passive reception; according to the definition of the right to disseminate information networks, it does not have complete freedom of “personal choice of time and place”, which makes it difficult to accurately categorize.

In the face of the development of media convergence technologies, this dichotomy has gradually revealed legislative shortcomings, and the relevant concepts have become semantically ambiguous.

2.2 Inadequate technical adaptation of the concept of “interactivity”

The concept of “interactivity”, in which the ex ante paradigm uses “personalized choice” as the basis for classifying interactive and non-interactive communication: if the audience has the possibility to personalize their access to the work, it is one of the interactive communications. At the same time, the ex ante paradigm defines “personalized choice” extremely broadly, so that even if the communicator imposes certain restrictions on the audience's personalized choice, it does not prevent the establishment of interactive communication. What constitutes non-interactive communication can only be deduced by reverse reasoning, i.e., that the public has absolutely no access to the work from a place and time of its own choosing.[6] However, television watchback services blur this concept. Watchback service is indeed interactive, users can actively select the previously broadcasted programs, on-demand viewing at a convenient time, which is much more flexible than the traditional TV can only be watched at a fixed time. However, its interactivity is discounted: first of all, the user can only watch what has been broadcast on TV stations, rather than the website's massive library; secondly, there is a limit to the amount of time that the user can watch back, and it will be gone after the expiration date, and cannot be saved indefinitely. Users can't order programs that haven't been aired yet, and they can't watch them for as long as they want.

Moreover, in the new technological scenario, the meaning of “interactive” has become complex. Traditionally, “interactive” in the context of the right to network communication was understood to mean

that the public could access the work at a time and place of their choice. However, with the development of technology, such as the emergence of intelligent recommendation systems, which actively push programs based on user behavioral data, users seem to be passive receivers, but in fact, these recommendations are based on the user's previous interactive behavior, with a certain "interactive" derivative characteristics. In addition, in some interactive live programs, viewers can interact with the anchor and other viewers through pop-ups, likes, etc., and can also influence the process of the program, which is different from the traditional definition of "interactive", and it is difficult to be measured simply by whether or not they can independently choose the time and place.

2.3 Ambiguity of the concept of "public"

The concept of "the public" is also vaguely defined in terms of modes of communication. Traditional broadcasting, which reaches an unspecified wide range of people through wireless or wired signals, and traditional information network communication, which makes content available to an unspecified majority of people through the open Internet, both explicitly refer to the "public". The "public" in the context of copyright law is not "all members of the public", but rather an unspecified majority of the population excluding family members and the circle of friends with whom one has frequent dealings.[7] However, TV playback services (especially when provided through cable networks or IPTV networks) present a challenge: their users are limited to the group of people who subscribe to the service through a particular network or device. Although this group of subscribers may be large, it is within a relatively closed system with access rights. This raises a central legal question: can the provision of an on-demand service to subscribers within such a closed system be considered a communication to the "public"? Specifically, does "the public" have to mean strictly anyone on the open Internet who is not at all specific? Does such a closed group of users constitute the "public" within the meaning of copyright law? With the development of network segregation and rights management technologies, the definition of "public" under the current law is not clear enough. Media convergence has changed the scope of information dissemination and audience groups, and the concept of "public" is no longer clear. On the one hand, there is an increase in the number of communication scenarios that are niche and specific to certain groups, such as the internal TV viewing system of an enterprise, which is used by the employees of the enterprise, and there is a controversy over whether these employees belong to the category of "public". On the other hand, with cross-border communication and global media integration, the geographical boundaries of the "public" have been broken, and there is a lack of a clear legal definition of whether the "public" of cross-border TV viewing services is the national public or the global public. In addition, artificial intelligence technology can generate personalized content based on user preferences, and it is difficult to determine whether dissemination aimed at a specific individual or a specific subgroup is considered dissemination to the "public".

3. Determination of the legal nature of broadcasting rights for IPTV Watchback Services

3.1 IPTV viewing service should not be characterized as "information network transmission right"

In practice, some companies have taken advantage of the differences in judicial practice on the definition of the ownership of live TV "viewing back" to file a large number of so-called infringement of their "right to information network transmission of works" in the name of "rights protection". In the name of "rights defense", a large number of so-called high-density lawsuits were filed for infringement of the "right of information network transmission of works", which appeared to be the protection of intellectual property rights, but in essence was an abuse of intellectual property rights protection. In the adjudication documents website, there are 16 judgments searched with the keywords of "TV viewing", "right of information network dissemination", "broadcasting right" and "Aiqiyi". keywords, there were 166 judgments, accounting for 63.1% of the number of cases with the same subject matter, and the judgments were mainly concentrated in the post-2019 period. The commonality of these cases is obvious: most of the defendants are local network TV companies, most of the competent courts are Beijing Internet Court/Beijing Intellectual Property Court, and most of the judgments are in favor of Aiqiyi, with close to the same amount of compensation.

The negative impact of these abusive litigation behaviors should not be underestimated. For enterprises, frequent involvement in litigation means investing a lot of human, material and financial resources, which greatly increases the cost of litigation and consumes the development energy of enterprises. From the perspective of industry ecology, this abuse of rights to initiate litigation creates an undesirable atmosphere of malicious competition. Enterprises put more thought into suppressing their

rivals through litigation, rather than focusing on improving service quality and technological innovation. In the long run, the innovative vitality of the TV watchback service industry is seriously inhibited, new technologies and new service models are difficult to be developed, and the progress of the whole industry is thus stagnant.

Broadcasting organizations have invested heavily in the field of programme production and dissemination, pouring a lot of manpower, material and financial resources into each and every step of the process, from pre-topic selection and planning, staff deployment, to mid-term filming and production, technical debugging, and post-promotion and distribution. Against this background, if the TV playback service is simply classified as information network communication right, it will undoubtedly bring significant impact on the rights and interests of broadcasting organizations. This classification may break the original communication control system, weakening the broadcasting organization's ability to control the dissemination of programs, and preventing it from effectively safeguarding the order and value realization of the dissemination of its own works. In the long run, the creative enthusiasm of broadcasting organizations will certainly be undermined, and the output of high-quality programs will be reduced.

Therefore, it is of great practical significance to deny the characterization of TV viewing services as the right to disseminate information networks. This definition not only respects and recognizes the long-term creative input of broadcasting organizations and protects their legitimate rights and interests, so that broadcasting organizations can continue to devote themselves to creativity in a stable environment; it also provides a strong guarantee for the rights and interests of users in their normal use, so that users can freely enjoy the convenience brought by TV playback services within a reasonable range. Only by clarifying this character can we achieve a balance between the interests of broadcasting organizations, users and other parties, and promote the healthy and orderly development of the broadcasting and television industry.

3.2 The legitimacy of characterizing IPTV Watchback Services as a “broadcasting right”

From the legislative purpose of copyright law to encourage the creation and dissemination of works and to protect the legitimate rights and interests of right holders, the characterization of TV viewing services as broadcasting rights is more in line with the value core of the law and the development needs of the industry. As the “escort” of the cultural industry, the core of the copyright law is to build a benign interactive ecology among creators, disseminators and users, while broadcasting organizations, as a key link in the chain of content production and dissemination, the precise positioning of their rights and interests protection has a direct impact on the innovation vitality and sustainable development of the whole industry.

The characterization of TV viewing services as broadcasting rights can more accurately fit their communication characteristics. Broadcasting right covers the right to publicly disseminate works by wireless or wired means, and TV viewing service is essentially a “delayed broadcasting” service provided by broadcasting organizations based on the broadcasted programs through cable TV networks or digital TV platforms within a limited period of time and terminal equipment to the users. This is an essential difference from the “interactive communication” emphasized by the right to disseminate information network - users cannot watch on demand at any time like using video websites, but must choose the program within the time limit set by the broadcasting organization, and the initiative of dissemination is always in the hands of the broadcasting organization. The initiative of dissemination is always in the hands of the broadcasting organization. For example, a local TV station opens up a week's access after broadcasting a TV drama during prime time, which is a proactive planning of the broadcasting organization on the time and scope of dissemination, which is very different from the mode of online platforms in which the users choose the time and content of broadcasting on their own.

From the viewpoint of legislative value orientation, the recognition of broadcasting rights is more effective in realizing the balance of interests of multiple parties. On the one hand, the broadcasting organization can clarify its control over the viewing service through the law and invest in the creation of content and the construction of the dissemination system with peace of mind; on the other hand, the users can enjoy the viewing service within the rules set by the broadcasting organization, and their rights and interests of reasonable use can be safeguarded, so as to avoid the restriction of use due to the confusion in the characterization of the right. Such characterization is in line with the dual objectives of copyright law to protect the rights and interests of the right holders and to promote the wide dissemination of works, which builds a stable development environment for the broadcasting industry and promotes the continuous output and efficient dissemination of high-quality program content.

In judicial practice, recognizing TV viewing services as broadcasting rights is a key move to achieve a fair distribution of copyright liability and to maintain judicial fairness and legal authority. Disputes in the field of copyright are often complicated by the ambiguity of the characterization of rights, and the definition of the right attributes of TV viewing services directly affects the balance of rights and interests of multiple subjects such as broadcasting organizations, content creators, network platforms and users.

From the long-term perspective of the industry's development, a fair distribution of copyright responsibilities can promote a virtuous cycle of the industry's ecology. By making it clear that TV playback services belong to broadcasting rights, broadcasting organizations do not need to worry about the dilemma of defending rights due to the ambiguity of rights characterization, and can invest in the optimization of content production and dissemination system with peace of mind; network platforms can also have a clear understanding of the boundaries of their own behavior, avoiding disputes arising from the grey area of rights exploration; and subscribers can enjoy the playback services within the framework of lawfulness and compliance. The design of this system with clear delineation of rights and responsibilities is the cornerstone for realizing the fair resolution of copyright disputes and promoting the sustainable development of the broadcasting and television industry.

4. Conclusion

Under the background of media convergence, TV viewing service has been upgraded from basic time-shifting to intelligent interactive system, and the contradiction between its technical evolution and legal characterization is essentially a conflict between technical iteration and legislative lag. Characterizing it as broadcasting right is in line with the nature of "time-delayed broadcasting", but also can curb the abuse of the right, balance the interests of multiple parties, and provide a uniform standard for judicial decisions. In the future, it is necessary to build a dynamic balance between technological innovation and legal regulation, so as to respond to the compliance challenges brought by intelligence and ecology with a forward-looking framework, and to promote the healthy development of the industry.

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