

# Study on the Imbalance of Interests in Copyright Format Contracts of Online Literature Platforms

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## Abstract

In recent years, disputes over the copyright format contract of online literature platforms have occurred frequently, and the imbalance of contractual interests reflected in the provisions of the contract on the mode and content of authorisation of works, as well as the mode of distribution of proceeds and the rights and obligations of the two parties, has become a more prominent legal issue. The reason for this is that the digital era has reshaped the development of the copyright industry, the online literature platform has shown a trend of "alienation" under the background of full copyright operation, and the copyright and other related legal systems are not perfect. The copyright format contract of online writing platform involves the attribution of rights, transfer of rights and licensing in copyright law, and is subject to the adjustment of China's Copyright Law. In order to reasonably balance the interests of platforms and authors, and to regulate the imbalance phenomenon, it is necessary to sort out and innovate the copyright clauses and related systems. At the same time, the relevant authorities and copyright collective management organisations also need to supervise and guide the format contracts to balance the interests of both parties. In addition, online platforms should set up a long-term vision, and reconstruct the balance of interests with authors, in order to promote win-win cooperation.

## Keywords

Online Literature Platforms; Copyright Form Contract; Balance of Interests.

## 1. The Concept and Characteristics of the Copyright Format Contract of the Online Literature Platform

### (1) The Concept of Copyright Format Contract for Online Literature Platforms

The copyright format contract of online literature platform referred to in this article mainly refers to the copyright authorisation contract concluded between online literature authors and online literature platforms for the purpose of clarifying the licensing or transfer of the copyright property rights of the relevant works. The contract will make detailed provisions on the core contents such as the signature of the work, the way of using the copyright of the work and the revenue sharing of the work, so as to ensure that the rights and interests of both parties are properly protected in the copyright transaction.

### (2) Characteristics of the copyright form contract of the online literature platform

There are several key features of copyright form contracts on online literature platforms:

Firstly, the signing of the contract between the two main parties is mainly carried out on the Internet. At present, different online literary platforms have announced the conditions for signing the contract, and generally only when the conditions are reached can the author apply for signing the contract to the platform, or the editor of the platform takes the initiative to contact the author for signing the contract, but the process of signing the contract is mainly through the Internet[1].

Secondly, the type and content of the contract is more complex. The authorisation contracts signed between authors and online literary platforms are neither simple copyright licensing and transfer contracts in the sense of the copyright law, nor are they the several typical contracts stipulated in the civil law. The contract titles of the major platforms are different, including literary work authorisation cooperation agreement, literary work exclusive authorisation agreement, contracted work cooperation agreement, etc., and the content of the contract is also quite complicated. Therefore, the online copyright licensing contract is actually a comprehensive agreement that integrates many rights and obligations and is quite complex in content.

The third is the format of the contract, which is also the most significant feature. Under the Internet environment, the advantage of the content of the format terms of the private network copyright licensing rules is that there is no need for repeated negotiations between the two sides, which in turn significantly saves the transaction cost and time cost, realises the perfect fit between the efficiency of the dissemination of works and the efficiency of licensing, and becomes the preferred option for the main body of copyright transactions. [1] Therefore, all major online literature platforms have formulated corresponding format contracts in advance and offered contract signing to eligible authors. Generally speaking, except for a few head authors with significant influence and market value, the platforms may adopt personalised negotiation mode, and other authors can only choose to accept or reject the contract at the time of contract signing, without being able to conduct in-depth exchanges and discussions with online literature platforms on the details of the contract. By adopting format contracts, authors often lack substantial freedom in choosing the content and type of contract, a situation that makes the format contracts of online literature platforms deviate from the fairness principle of contract law to a certain extent, and triggers many discussions on the protection of authors' rights and interests and the healthy development of the online literature industry. Therefore, although online format contracts effectively reduce the cost of negotiation between the two parties, they also breed an imbalance in the interests of the two subjects of the contract and increase the risk of disputes between online literature platforms and authors.

## **2. The Specific Performance of the Imbalance of Interests in the Copyright Format Contract of the Online Platform**

With the development of network technology and new media, the mutual integration of media has gradually broken the balance of interests. In the field of network literature industry, the effect is mainly between the author as the creator and the network literature platform that assumes the responsibility of communication of works. The specific performance is that the interest imbalance in the copyright format contract of the network literature platform is obvious, which can be analyzed from the following four aspects:

(1) Imbalance of interests involved in the manner and duration of authorisation of copyright in works

As the platform has already formulated the format contract in advance, the author does not have the right to decide the way and period of authorisation. In other words, the online platform is in a great advantageous position when signing the contract, and the strict format contract allows the platform to obtain the initiative, and the legal status of the two parties' subjects is in an unequal position. First of all, for the purpose of obtaining more economic benefits and improving efficiency, platforms often adopt the exclusive authorisation mode in the contractual authorisation method, which stipulates that the copyright of the work is generally authorised to the platform, and that the authorised work can be sub-licensed and sub-authorised without the need to obtain the author's consent. In addition, the platform can also authorise third parties to adapt and develop online literary works into various works of film, television, animation,

comics, games, etc., while the authors are unable to decide on the content and price of the copyright transaction. Even if the author's works achieve great success in the market, the author can only obtain the revenue share agreed in the contract, which is not fair to the author. Secondly, the platform of the authorisation period is endless prolongation, for example, in 2020, Yuewen Group authorisation contract incident caused a storm, the contract has a paragraph agreement "the exclusive authorisation of this agreement from the date of signing to the date of the expiry of the period of protection of copyright property rights of the agreed works," which aroused the dissatisfaction and protests of many authors. Such a long term of authorisation is essentially a one-time buyout of the author's rights, which may result in the loss of the author's copyright in the work.

### (2) The problem of interest imbalance involved in the model of income distribution of works

The revenue sharing mechanism between most new authors and websites is a split model, under which the author and the website share the revenue generated from e-subscription or advertising revenue according to a pre-agreed ratio. In addition, in order to encourage authors to maintain a stable update frequency, the website will also provide a certain amount of full-attendance bonus to qualified authors as an additional incentive. Although the share ratio varies from platform to platform, they are all based on "net income", i.e. what the platform receives after deducting channel expenses, operating expenses, etc., and the actual remuneration received by the author is a certain percentage of the net income. However, platforms do not make transparent announcements about related expenses, and advertising revenue and other data are also based on platform statistics, so the "net income" is purely in the hands of the platform. Not only that, there is no clear channel for authors to enquire about their remuneration. In the contractual dispute between Chen Shiyao and Changsha New Reading Culture Media Co., Ltd, the "Exclusive Licence Agreement for Literary Works" stipulated a specific agreement on revenue sharing, but the author could only check the daily and monthly gross income, but not the details and composition of the income, and the platform did not disclose the income gained from the sale of the works through other channels, the number of subscribers to a single chapter of the works, and the sales data. [12] In short, the platform's own website revenues and the share of revenues generated by authorised third parties are not transparently disclosed, making it difficult for authors' reasonable incomes to be thoroughly safeguarded.

### (3) The imbalance of interests involved in the authorisation of future works

Future works, here mainly refers to works that have not yet been created and released by the author, including subsequent derivative works of the agreed work and other works created by the author. Firstly, the platform will generally provide in the contract that the right to adapt the work of the agreed work is exclusively granted to the platform, such as prequel, postquel, outtake, sequel, series, etc., which are granted to the platform, such as not obtaining the permission of the platform, and the author's own subsequent creations may also be subject to the risk of infringement. Secondly, most platforms also stipulate that other works created by the author should be granted to the platform on a priority basis, or at least not contracted with other platforms in terms of authorisation. In the case of Changsha XinYue Culture Media Co., Ltd. and Chen Shiyao, XinYue company filed a lawsuit on the grounds that Chen Shiyao had infringed on its right of priority contracting, because it was also agreed in advance in the copyright format contract that the author should inform the platform of the creation of a new work within the contracting period, and that he or she could not authorise the new work to a third party without the platform's knowledge, and that the platform had the priority contracting right of the new work. [13] The contract terms of this priority signing undoubtedly deprived the author of the right to choose, deepened the bondage of the author's freedom of creativity, and the terms and conditions were too brief. For one thing, it does not specify the response time for the platform to decide on the contract after the author informs the platform;

for another, it also does not clarify whether the platform can give up the priority contract, and whether the author can continue to choose to authorise to other platforms after that, and so on. Thus, the contract terms reflect an imbalance of interests between the two parties and seriously undermine the rights and interests of authors.

(4) Unreasonable distribution of rights and obligations as well as responsibilities between the two parties

The rights and obligations of both parties are generally stipulated in the contract, but it is obvious that the rights of the author's side are restricted, for example, the platform can require the author to modify the content of the work in accordance with the contract, and the platform can independently decide on the mode of operation and sales channels of the work, and the author must follow the requirements of the platform and co-operate with the platform. The platform's great discourse power over the works is also reflected in its direct control over the works. In the case of copyright infringement dispute between Hu Wenjiao and the defendant Horgos Aiyo Entertainment Technology Co., Ltd, the platform used the author's name without the author's knowledge, changed the name of the work in question, and renewed the work on the basis of the finished work, renewed the work for nearly a hundred chapters, and posted the content on other websites to continue to make profits. This behaviour easily made readers mistakenly believe that the renewed work was created by the plaintiff, which seriously affected the plaintiff's personality interests, and belonged to the behaviour of distorting and tampering with the work without permission, infringing the plaintiff's right to protection of the integrity of the work in question. [14] The root of the case lies in the platform's unreasonable allocation of the rights and obligations of both parties in the form contract, so much so that it leaves room for the platform to abuse its rights in order to grab more benefits; at the same time, the asymmetry of information makes it difficult for authors to discover infringement, and even if they do, authors can only safeguard their own interests by means of judicial remedies, which are usually costly.

The unreasonable distribution of responsibilities between the two parties is reflected on the one hand in the fact that if the author infringes the copyright of another person, the platform does not have to bear any responsibility for this. However, when the author's copyright is infringed, even though he/she succeeds in defending his/her rights and receives compensation, according to the contract, the compensation has to be shared between the author and the platform according to a certain percentage. On the other hand, the contract will also stipulate the circumstances of breach of contract, and the author may face a high amount of liquidated damages or more costs in the event of a breach of contract.

### **3. Analysis of the Causes of the Imbalance of Interests in Copyright Format Contracts of Online Writing Platforms**

(1) Reality-based: the digital age has reshaped the development of the copyright industry for works

The traditional publishing industry is one in which authors and publishers work together to bring their work to the public through the publisher, with the payment of fees agreed upon by both parties as a means of resolving copyright issues. In the immature period of communication technology, this industry model is widely recognised by authors, while the distributors can also make considerable profits. However, the ever-changing development and application of mobile network technology has led to a profound change in the way works are disseminated and authorised, and the traditional publishing model is gradually being replaced by new models. For authors, the choice to create online offers unprecedented convenience, enabling them to have broader autonomy and greater comfort in creating, publishing and sharing their works.

Of course, the innovation in the mode of communication has also weakened the ability of copyright owners to prevent infringement to a certain extent, and this change has posed a new challenge to copyright owners, requiring them to find more effective copyright protection strategies to adapt to the needs of the digital era. [2] To break the individual dilemma in dealing with infringement, most authors will accept the platform's copyright format contract and seek the platform's intervention to defend their rights and interests. Of course, there are more reasons than that for authors to enter into a licensing contract with a platform. If an author chooses not to enter into a licensing contract with a platform and merely publishes his or her work on the platform, it is likely that the work created by the author will not generate any revenue. [15] In short, the digital age has reshaped the development of the copyright industry. Unlike the traditional publishing model, online creation has brought convenience to the authors of online literature and also made them naturally dependent on the platforms, which is the reality of the imbalance of the interests of online literature platforms in the form of copyright contracts.

(2) Industry ecology: "alienation" trend of online literature platforms under the background of full copyright operation

At the beginning of the emergence of online literature publishing platform, it plays the role of bridge in the industrial chain, connecting upstream online writers and downstream online readers. However, the online literature publishing platform has gradually entered the era of collectivization, and the online literature publishing platform operated by the group mode takes the full copyright operation as the core, that is, based on the payment of works reading, and comprehensively develops the copyright extension operation such as offline publishing, film and television adaptation, animation and game adaptation. The profit methods of the network literature group have become more diversified, in addition to the original paid reading and third-party advertising income, but also increased the profit of the full copyright operating income. [3] As the decision-makers driven by capital, the operators of online literature platforms undoubtedly pursue the maximization of interests as the fundamental goal, so in the process of full copyright operation, "alienation" is inevitable, mainly manifested in interfering with the content production of upstream online authors. Through background data collection and accurate analysis of market feedback, the platform will cater mainly to the preferences of online readers and market trends, so as to "guide" authors to write similar works, which hinders the authors' creative freedom and makes them become "digital laborers", which also leads to the phenomenon of increasing market-related homogenized works and insufficient innovation in subject matter. [4] Therefore, the copyright format contract provides for the imbalance of interests of both parties, such as granting a series of rights to the platform, the platform can arbitrarily modify the author's work, and the author needs to submit the outline and content in accordance with the requirements of the platform, all of which reflect the platform's desire to achieve direct control over the author and the work while obtaining huge commercial benefits through the contract.

Legislative Limitations: Challenges and Conflicts Faced by Copyright Law and Other Legal Systems in the New Media Environmen.

Copyright law, is an important player in maintaining the state of balance between the various subjects. It plays a key role between publishers, authors and readers, aiming to protect authors from infringement of their legitimate rights and interests, while encouraging authors to continue to create more innovative works. Through the intermediary role of publishers, works can be circulated to the public, thus promoting the popularisation of knowledge and cultural exchange. In short, copyright law not only maintains the balance of rights and interests of all parties, but also provides strong legal protection for the dissemination and promotion of knowledge. [5] In the traditional environment, the dissemination of copyright is relatively inefficient. With the advancement of technology and the integration of media, the

communication of information is now free from the constraints of geography and time, and the subjects and objects of dissemination are becoming more and more diversified. As a result, the relevant legal system mainly based on the copyright law is also undergoing the impact of the new environment, gradually exposing some deficiencies. For example, the copyright format contract of the online platform is essentially a copyright licensing contract. Due to the fact that international treaties seldom involve the transfer of copyright licences and the copyright law system stresses the respect for the autonomy of the parties, the Copyright Law of China pays insufficient attention to the content of the copyright contract and stipulates that the content of the copyright contract is too brief, which ignores the weak position of the creators and leaves it to the parties to negotiate on their own. [6]The provisions on copyright contracts are too brief, thus leaving ambiguous areas for disputes over copyright contracts in practice. Specifically, the relevant provisions of the Copyright Law on copyright licensing contracts appear to be rather rigid and difficult to flexibly adapt to the practical needs of the development of the cultural industry. For example, the existing provisions on copyright licensing contracts obviously fail to fully take into account the attribution of rights and distribution of benefits of the derivative works, which has become a pain point that needs to be solved urgently in the actual operation, and is particularly important in the mode of copyright dissemination and management relying on the network platform. [7] Therefore, in the absence of relevant laws and regulations to impose the necessary guidance on the platform, the Internet platform, as a disseminator, is thus able to easily obtain the copyright property rights of the work or even the future attribution of the rights of the work from the authors under unreasonable conditions in succession through the copyright contract, which adversely affects the rights and interests of the authors and creates an imbalance in the interests of the two parties.

#### **4. The Path to Resolving the Imbalance of Interests in the Copyright Format Contract of Online Literature Platforms**

##### **(1) Improvement of legal provisions related to copyright law**

The provisions of the Copyright Contract chapter of the Copyright Law should be further refined and improved to increase its operability for reference by the platform when formulating the contract, and also to provide protection for the relevant rights and interests of authors. For example, some scholars have proposed that Article 29 should be regarded as a mandatory provision that "the other party shall not exercise the rights not expressly licensed or transferred by the copyright owner without the consent of the copyright owner", and the "express" should be refined with the help of judicial interpretations. [8] This move requires online platforms to avoid stipulating a series of rights and authorisations in a general way in the form contracts, and to express each right clearly and explicitly in the contract. For the rights contained in future works, as well as new types of use emerging from practical application, should be regarded as the scope of the rights and interests not explicitly licensed or transferred in this article, and prohibited to be covered only by the broad enumeration in the existing contract. Such as the net form contract common provisions "party A enjoys the right of priority contracting of new works created by party B", the platform must make a detailed description of the content of the priority contracting of future works, as well as the scope of the period, otherwise this provision will be considered invalid. In short, by elevating the arbitrary norms to mandatory norms, the platform can be required to stipulate the use of copyright in the contract in detail, and can also effectively avoid the platform's undue encroachment on the right to use the work in the future, and ensure that the lawful rights and interests of the creator in the future use of the work to be fully protected by the law. In addition, clauses such as "the maximum duration of exclusive copyright authorisation" and "the exclusive licensee shall notify

the licensor in writing when sub-licensing or sub-authorising" can be added to more effectively protect the interests of creators.

A copyright contract variation clause can be introduced into the copyright law to accommodate the dynamic changes in the exploitation of works in the digital economy. [9] In the digital environment, development activities continue to show an evolving pattern, which leads to significant uncertainty and unpredictability in terms of revenue streams, profit margins and remuneration. As a result, assessing and determining a reasonable standard of remuneration for authors becomes extremely difficult, and it is likely that authors will be faced with a situation where they are unable to receive reasonable remuneration for the subsequent development and use of their works. In addition, when signing a copyright licensing contract for online literature, it is an almost impossible task to require the contract to provide an exhaustive agreement on all possible future scenarios. Therefore, the introduction of the copyright contract change clause in the copyright law, through such a system design, not only helps to protect the legitimate rights and interests of authors, but also meets the actual needs of the development and utilisation of works in the era of digital economy, and helps to promote the sustainable and healthy development of the cultural industry.

The transparency obligation in the EU Digital Single Market Copyright Directive can be learnt from, and relevant provisions can be set up in the copyright law, i.e. in order to ensure that authors and other creators can obtain sufficient and comprehensive information on the exploitation of their works, platforms are required to provide creators with a detailed report on the exploitation of their works, which should include the manner in which their works are exploited and the revenues generated, in a specific period of time. [10] Through this initiative, authors can have a clearer understanding of the market performance of their works and ensure that their rights and interests are fully protected.

## (2) Strengthening industry oversight and guidance

A system of publicising copyright contracts can be constructed to prevent imbalance of interests between platforms and authors by publicising the contents of copyright contracts between authors and online literature platforms and the subsequent contracts related to copyright transactions, with public supervision. Regarding the matters that need to be disclosed in the contract, the national copyright authority can uniformly formulate standards and establish a nationwide unified publicity platform. The construction of a copyright contract disclosure system can urge online literature platforms to pay more attention to the rights and interests of authors when formulating contracts, and is also conducive to upstream copyright transactions in the development of all copyrights of online literature works, promoting the healthy development of the copyright transaction market.

In the process of promoting the healthy and orderly development of the industry, the relevant industry associations and management departments should actively explore the construction of a perfect system of industry rules to effectively curb the excessive predatory behaviour of capital. Specifically, according to the relevant provisions of the Copyright Law, the relevant industry associations and management departments should formulate and promote the standardised text of the contract, design a fair mechanism of liquidated damages, and guide all kinds of market players to ensure the fairness and reasonableness of the contract terms, so as to avoid the reoccurrence of similar "Yuwen Contract Incident". In addition, the industry authorities also need to strengthen the supervision of the healthy development of the industry, if the platform does not use the unified department formulated by the model contract, should be ordered to carry out rectification.

Relevant associations and copyright management organisations can explain the terms and conditions of the platform copyright contract. For example, the Chinese Writers' Association has issued an interpretation of the common terms and conditions of the authorisation

agreement of the right to disseminate the information network, and on top of that, it can carry out further refinement and specific interpretation, so as to provide more authors and platforms with the copyright authorisation agreement to learn and refer to it.[16] Relevant associations can also build rationalisation channels for authors to provide feedback and help, to face up to the authors' own interests and to provide protection for more authors.

### (3) Optimising the Platform's autonomy

The platform should improve the updating mechanism of the contract, formulate more rationalised format contracts that can be chosen by different authors, pay attention to the substantive fairness of the contract, and strengthen the obligation of prompting instructions throughout the contracting process, always accepting the supervision of authors and responding to the feedback of authors. Platforms should clearly recognise that authors and platforms are in a symbiotic relationship and should pursue a win-win model. The platform needs to be neutral and consider diversified modes such as licensing, commissioning and rights transfer in the long run to give authors more choices[17].

In order to protect the rights and interests of authors, online literature platforms should actively optimise the income structure of authors and set up clear channels for disclosure of income, so that authors can check the details of every income of their works at any time. At the same time, the platform should also continue to improve the author's welfare policy, to ensure that the author can more fairly share the economic income generated by the work in the process of dissemination, so as to stimulate its creative enthusiasm.

Under the current background of full copyright operation of online literature, online literature IP front-end development mode has gradually matured, and content platforms have been able to start incubation at the serialisation stage of works, and online literature IP continues to lead in the sequence of resources for film and television adaptations, with "content is king and quality is supreme" becoming the market's and audience's test for IP. [18]Under this market pattern, platforms should pay more attention to the improvement of the quality of works in the process of operation and abandon excessive intervention in the writing of authors. Online literature platforms should deepen their own strategic layout, actively organise attractive writing activities and formulate incentive schemes for quality works, and dig deeper into more boutique IPs to enhance core competitiveness and realise the healthy and stable development of the industry against the backdrop of the prominent IP homogenisation phenomenon in the market nowadays.

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