

# ***Demarcating the Boundaries of the Fair Use Doctrine in Musical Copyrights within Short-Form Video Content: A Critical Legal Analysis***

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**Abstract.** The rapid expansion of China's short-form video sector has made music a near-default component of video production—and a frequent trigger for copyright conflict when works are used without authorization. Drawing on China's existing copyright framework, relevant judicial decisions, and available empirical evidence, this article revisits how the fair use doctrine is being invoked (and contested) in short-form videos that incorporate musical works. The analysis suggests a persistent mismatch: fast, iterative, and highly modular video-making practices sit uneasily with a closed, enumerated list of fair use scenarios under current law. In practice, fair use arguments rarely prevail in litigation, reflecting a broader strain between a relatively static legal design and the pace of technological change. Risks are further amplified by limited copyright literacy among users and by platform governance that is often uneven or procedurally under-specified. To respond to these pressures, the article proposes a multi-level agenda spanning legislation, adjudication, platform compliance, and user behavior. Key proposals include introducing more open-ended statutory language, clarifying how the three-step test should be operationalized in this setting, and promoting greater consistency in adjudicative reasoning. At the institutional level, it argues for front-end mechanisms—such as centralized licensing and fair use pre-screening—to reduce ex post disputes and lower users' legal exposure. The article also considers more flexible authorization pathways, including Creative Commons licensing, as a pragmatic way to align creative incentives with efficient dissemination. Overall, the study aims to contribute both doctrinal and policy-oriented guidance for copyright governance in short-form video ecosystems, seeking a workable balance between rights protection and industry innovation.

**Keywords:** short-form video, musical copyright, fair use, doctrinal boundaries, platform governance

## **1. Introduction**

In today's digitally networked media environment, short-video platforms have become a primary channel through which musical works are circulated, remixed, and consumed. Music is now woven into short-video production as a default resource: it heightens the sensory appeal of clips and, just as importantly, supports core platform objectives such as engagement, session length, and repeat visits. This integration, however, has intensified copyright friction. The most persistent dispute is not

whether music is used, but where the line should be drawn between permissible fair use and infringement when music is embedded in short videos.

Many of the recurring disputes stem from precisely this boundary problem. Creators frequently rely on fragments of songs, hooks, or background tracks in ways that feel routine in platform practice, yet remain legally ambiguous. China's Copyright Law supplies the baseline framework for protecting musical works, but its fit with short-video creation is strained. The tempo and scale of short-video production—fast, iterative, and highly diversified—do not align well with a system that relies on a relatively rigid, closed set of enumerated fair use categories. In practice, music in short videos is often used in fragmented and highly adaptive ways that sit outside those narrowly listed scenarios. The governance challenge is compounded by algorithmic recommendation: once content is boosted and rapidly redistributed, the scope of exposure expands quickly, raising both the likelihood of infringement and the difficulty of effective rights management.

## **2. Current landscape and emerging issues of musical copyright infringement in short-form video content**

### **2.1. Infringement dynamics of musical works in short-form video ecosystems**

Since the release of the Fourth Five-Year Plan for Digital Economy Development in 2021, China's self-media industry has rapidly attracted a massive user base by leveraging high-speed 5G networks, integrating AI-generated content (AIGC) tools, and capitalizing on the explosive growth of short-form video platforms. As of June 2024, China's internet user population had reached nearly 1.1 billion (1.09967 billion), marking an increase of 7.24 million since December 2023, with an internet penetration rate of 78.0%. Notably, short-form video users now constitute 95.5% of the total online population [1]. The rapid expansion of short-form video platforms has disrupted traditional professional content creation models and commercialized dissemination by means of mass digitalization and user-generated content (UGC), broadening the scope of creators to include virtually all internet users and normalizing content creation and sharing as everyday activities [2].

Even though user-generated content clearly leads in sheer volume, the expansion of the "creator economy" has been accompanied by a noticeable rise in copyright disputes. In short-form video practice, one recurring flashpoint is the unlicensed use of background music. Publicly released figures from the Beijing Internet Court illustrate the scale of the issue: from September 9, 2018 to February 28, 2022, the court accepted 2,812 short-video-related copyright infringement cases and concluded 2,026 of them [3]. Many of these disputes were tied, in one form or another, to background tracks being embedded in short videos without authorization.

### **2.2. Copyright infringement patterns of musical works in short-form video production**

Copyright infringement issues primarily stem from creators' limited awareness of copyright law and the multifaceted ways in which music is used without authorization. Notable patterns include:

#### **2.2.1. Unlicensed use of background music**

The most prevalent form of infringement involves creators incorporating copyrighted music as video soundtracks without securing legal permission from rights holders (e.g., composers, lyricists, sound recording producers, or licensing agencies), followed by public dissemination on digital platforms. A landmark case arose when the account operated by Papatube used the original instrumental work *Walking on the Sidewalk* by the Japanese label Lullatone as background music in its viral video "2018 Top Domestic Smartphone Review" without authorization. The video garnered approximately 6 million views, 40,000 shares, 50,000 comments, and 30,000 likes. In its first-instance judgment, the

Beijing Internet Court awarded RMB 7,000 in damages and reasonable enforcement costs to the plaintiff [4].

### 2.2.2. Derivative work controversies

Creative adaptations of musical works—including covers, remixes, mashups, and transformative edits—frequently give rise to fair use disputes in popular video formats. In a representative case adjudicated by the Guangzhou Internet Court, Company B incorporated a 13-second segment of the song K (for which the sound recording rights were exclusively licensed to Company A) into its video titled “Top 10 Chanting Tracks Challenge” without authorization. The 3-minute-23-second video featured captions identifying the song’s performer and release date, while also satirizing its “chanting mode.” Company A successfully sued Company B for infringing its exclusive right of communication through information networks [5].

## 3. Legal foundations for copyright protection and fair use of musical works in short-form videos

### 3.1. Copyright infringement risks in short-form video music usage

China’s current Copyright Law and supporting judicial interpretations have established a systematic regulatory framework to address copyright disputes involving musical works in short-form video content. The statutory definition of protected “works” under Article 3 of the Copyright Law encompasses “intellectual creations in the fields of literature, art, and science that demonstrate originality and are capable of being expressed in tangible form.” This protection explicitly extends to musical works, which are legally defined as “original expressions incorporating musical elements such as melody, harmony, and rhythm, susceptible to vocal or instrumental performance (including but not limited to songs, symphonic works, and instrumental compositions).” A typical musical work comprises both lyrical and compositional elements, giving rise to separate copyright protections for lyricists and composers, respectively. The subsequent transformation of such musical works into recorded performances—commonly referred to as “songs” in colloquial usage—generates additional derivative rights: performers’ rights, vested in vocalists, and phonogram producers’ rights, pertaining to recording entities. Consequently, the incorporation of background music in short-form video production inherently implicates three distinct legal entitlements within the framework of copyright and neighboring rights: (1) musical work copyright (encompassing lyrics and composition), (2) phonogram-related rights, and (3) performers’ rights.

Article 10 of China’s Copyright Law lists seventeen exclusive rights enjoyed by copyright holders, such as the rights of reproduction and adaptation, as well as the right of communication through information networks [6]. For producers of phonograms (sound recordings), Articles 44 and 45 further specify the scope of related rights: audio recording producers may authorize acts including reproduction, distribution, rental, and online public communication via information networks, and they are entitled to receive corresponding remuneration for such licensing [7]. By contrast, performers’ rights are typically implicated only in a narrower set of short-video scenarios—most notably when creators directly use original vocal performances (i.e., the performer’s recorded rendition) rather than merely referencing or re-creating the musical work.

Using the advanced search functionality of the PKULaw database, the author conducted a targeted case retrieval by selecting “Civil Disputes” under the legal cause categorization and filtering specifically for “Copyright Ownership and Civil Disputes.” A full-text search using the keywords “short video,” “background music,” and “fair use” yielded 37 relevant judicial cases. Analysis revealed that 16 cases involved copyright infringement claims arising from creators’ unauthorized use of protected musical works as background scores or derivative content. Critically, 15 of these 16

adjudications unequivocally found that the defendants violated the plaintiffs' "right of communication through information networks," highlighting this entitlement's predominant vulnerability in such litigation. As defined under Article 10(1)(12) of the Copyright Law, the right of communication through information networks constitutes "the exclusive entitlement to make works publicly accessible via wired or wireless means, enabling public reception at individually selected temporal and spatial coordinates" [6]. Judicial interpretation further clarifies the scope of infringement through Article 3(2) of the Supreme People's Court's Provisions on Adjudicating Civil Infringement Disputes Involving the Right of Communication through Information Networks, specifying that the infringing "act of making available" includes "depositing works, performances, or audiovisual recordings within information networks through server uploads or analogous methods, thereby enabling public acquisition via downloading, browsing, or comparable means at self-determined times and locations" [8].

This analysis reveals that, in the context of musical works, establishing infringement of the right of communication through information networks requires the fulfillment of two cumulative conditions: first, the unauthorized uploading of musical works onto information network storage media; and second, enabling public accessibility through "interactive transmission," which permits users to exercise autonomous control over content selection and playback operations (e.g., pausing music). Notably, the mere act of making stored works available to the public constitutes an independent act of transmission requiring authorization, regardless of whether subsequent user interactions occur [9]. The legal determination of "making available" hinges on the act of uploading works to a network-accessible state, rather than on evidence of actual downloads or views. The operational mechanics of short-form video dissemination—combining user-generated uploads, algorithmic platform distribution, and on-demand user access—intrinsically satisfy the legal criteria for "making works available to the public," thereby explaining the predominant invocation of this right in copyright infringement litigation within this domain.

### **3.2. Theoretical foundations for applying the fair use doctrine to musical works in short-form videos**

Driven by digital innovation and heightened demands for individual expression, the short-form video industry has redefined paradigms of mass cultural production through its unique mediatic characteristics, simultaneously fostering an emergent consumer market characterized by "creation-as-consumption" and "interaction-as-production." Within this context, two core challenges emerge in copyright governance: establishing rules to allocate market benefits derived from novel creative contributions, and reconciling tensions among private copyright control, cultural industry development, and free expression imperatives [10]. To address these challenges while safeguarding the public interest in knowledge dissemination, cultural advancement, and educational access, China's Copyright Law incorporates limitations on copyright exclusivity, with the fair use doctrine serving as its central regulatory mechanism.

Fair use permits the lawful utilization of published works without authorization or compensation, contingent upon statutory compliance. China's fair use framework, rooted in the three-step test articulated in Article 9 of the Berne Convention and Article 13 of the TRIPS Agreement, combines a closed-list system of 12 enumerated exceptions under Article 24(1)(i) of the Copyright Law—including purposes such as personal study, research, or appreciation—with two general criteria introduced in the 2020 amendment: non-interference with the normal exploitation of the work and avoidance of unreasonable prejudice to the legitimate interests of copyright holders. This legislative structure formally aligns with the requirements of the three-step test by satisfying the "specific special cases" condition through Article 24's exhaustive enumeration, directly codifying the "normal

exploitation” criterion of the second step, and mirroring the third step’s prohibition against undue harm to “legitimate interests.” However, judicial divergence persists in practical application [11].

Even where statutory language appears broadly aligned, court practice does not always track the legislative design in a consistent way. Based on a dataset of 136 concluded judgments retrieved from China Judgments Online—searched using the terms “fair use” and “short-form video” within cases categorized as disputes over “infringement of communication through information networks”—the empirical picture is uneven. Only 13.97% of the decisions adhered closely to the relevant statutory provisions. By contrast, more than half departed from the domestic framework, in some instances importing external evaluative approaches, including a U.S.-style four-factor inquiry (purpose, nature, amount, and market effect) [12].

This pattern points to jurisprudential fragmentation: without stable and shared decision criteria, both creators and platforms face weaker *ex ante* predictability when assessing compliance risk.

#### **4. Analysis of identification challenges in applying the fair use doctrine to musical works in short-form videos**

In China’s copyright system, fair use operates as a limited “safety valve”: it carves out statutory exceptions intended to temper the reach of exclusive rights and preserve space for socially valuable uses. In litigation, it is routinely raised as a defense. Yet, in the short-form video context—especially where background music is involved—courts rarely accept it.

Based on a targeted screening of adjudicated disputes in the Peking University Legal Database (PKULAW), this study identified 16 concluded cases involving the use of background music in short-form videos. Only two decisions accepted a “fair use” argument and found no infringement. Taken together, these outcomes do not simply reflect high evidentiary hurdles; they point to a more practical difficulty: applying a doctrine meant to be context-sensitive to a production environment that is fast-moving, modular, and platform-mediated.

##### **4.1. Applicability gaps and limitations of the current legal framework on short-form video platforms**

Although the 2020 Copyright Law introduced a general fair use provision, the structure of China’s exceptions remains largely tied to 12 exhaustively listed categories, preserving a closed-list approach [13]. This design becomes even tighter in judicial practice. Courts commonly treat the statutory list as a hard boundary and tend to reject defenses that cannot be cleanly mapped onto one of the enumerated categories—an interpretive stance that sits uneasily with the doctrine’s underlying logic of flexibility. As a result, the existing framework struggles to track the technical and creative realities of short-form video production.

A clear example is the everyday use of music in fragmented and adaptive forms. Creators often clip, remix, or lightly modify parts of a longer work to fit a visual narrative. These uses can be brief yet creatively purposeful, which complicates infringement assessment: the “smallness” of the excerpt does not, by itself, resolve whether the use is fair, and the act of repurposing can blur conventional boundary markers. At the same time, the growing volume of third-party music embedded across platforms further amplifies these definitional pressures.

Still, the policy rationale of fair use is not exhausted by the enumerated list. If copyright is meant both to incentivize creation and to accommodate public interest, it follows that some non-enumerated uses may be normatively defensible when they are consistent with the equitable function of the doctrine—even where the statutory categories do not provide an obvious hook. In other words, the system increasingly relies on how courts handle the “open-ended” supplementation function that copyright law is expected to perform, particularly in novel media settings.

Short-form video disputes also tend to be multi-party by design. Claims frequently involve rightsholders, individual creators, and platform operators, and platforms often respond with layered defenses: they attribute uploads to end users, characterize themselves as technologically neutral service providers engaged in information storage, and deny joint liability on the grounds that they lack direct infringing conduct or the requisite subjective fault.

Decisions such as *Foshan Tianyi Culture Communication Co. v. Beijing Sohu Internet Information Service Co.* (Case No. 8381, Foshan Chancheng District Court, 2021) [14] and *Beijing Kuaishou Technology Co. v. Beijing Huayihuilong Network Technology Co.* (Case No. 959, Tianjin Third Intermediate Court, 2021) [15] illustrate how these arguments operate in practice. They also expose a recurring problem: uncertainty over how rights and obligations should be allocated across stakeholders, which in turn makes liability attribution more contested—and more difficult to predict—when music is used as part of short-video production and distribution.

#### 4.2. Deficient substantiation of defendants' legal defenses

Defendants' arguments in copyright infringement cases frequently lack sufficient legal substantiation, either due to pleadings that are demonstrably without jurisprudential foundation or due to procedural default through complete non-participation in adversarial proceedings. Analysis of the aforementioned 14 adjudicated infringement cases reveals that courts explicitly rejected fair use defenses in three instances, based on two principal legal grounds.

First, *prima facie* failure to satisfy statutory prerequisites. Article 24 of the Chinese Copyright Law mandates attribution as a non-waivable condition for invoking fair use exemptions. Defendants' failure to identify the author when using protected works constitutes a critical procedural defect. For example, in *Chengdu Haifanwu Technology Co., Ltd. v. Qie Zhongli* [16], the People's Court rejected the fair use defense due to non-compliance with the mandatory attribution requirement, thereby precluding the application of Article 24.

Second, doctrinal misconstruction of copyright limitations. Judicial opinions frequently reveal defendants' conceptual confusion between distinct statutory frameworks. In *Chengdu Haifanwu Technology Co., Ltd. v. Chen Maoyuan* [17], the court clarified that the mechanical application of the "free performance" exception under Article 24(9) to the incorporation of soundtracks is a categorical error, as such usage does not meet the doctrine's purposive constraints (i.e., non-commercial public welfare objectives). Among the remaining 11 infringement determinations, eight defendants defaulted without justifiable cause, with the majority demonstrating procedural nonfeasance by failing to respond to infringement notices and continuing infringing activities.

Moreover, an excessive judicial dependence on formula-driven fair use reasoning has become a structural weakness that merits closer scrutiny [12]. When assessing fair use claims, some courts appear to recycle standardized analytical language across factually distinct disputes—a *de facto* "one-size-fits-all" method that does not consistently grapple with the defendant's case-specific submissions. The consequence is twofold: statutory factual elements are addressed only at a high level, and the parties' arguments receive limited, if any, substantive engagement.

A concrete illustration can be found in a copyright infringement dispute involving a Guangzhou company and Wenling Company et al. The defendant maintained that the contested use satisfied fair use under both the "three-step test" and a "four-factor" style analysis. In support, it argued (1) that the use consisted of a 19-second excerpt from a 3-minute-21-second musical work and therefore did not amount to substantial reproduction, particularly because it did not reproduce the work's core melodic or lyrical material; and (2) that deploying the excerpt merely as background audio did not diminish the work's market value or constrain its dissemination prospects [18]. Nonetheless, the Beijing Internet Court ultimately found infringement without offering a substantive evaluation of these fair use arguments.

## 5. Optimizing fair use standards for musical works in short-form video content

### 5.1. Systemic reconfiguration of legislative and judicial frameworks

Under China's current copyright regime, Article 24 adopts a predominantly enumerative model of fair use: twelve specified scenarios, supplemented by a residual clause. Although this architecture is often described as being aligned, at least in form, with the exceptions framework associated with the Berne Convention [19], its rule-bound design is increasingly difficult to square with the realities of digital creation and distribution. The difficulty is not only legislative. In implementation, courts frequently collapse fair use disputes into a binary outcome—either full exemption or infringement—leaving little room for more calibrated reasoning in digitally mediated settings (for example, non-expressive uses or *de minimis* forms of sampling). This lack of doctrinal elasticity weakens legal predictability and can invite overextension in adjudication, particularly where normative thresholds are read inconsistently or discretion is exercised unevenly. Empirical work likewise suggests that, in short-form video disputes involving musical works, courts are generally hesitant to accept fair use defenses, a pattern that may discourage certain forms of transformative reuse.

To bring the statutory structure into closer alignment with technological change, three mutually reinforcing reforms warrant priority. First, legislative amendment should strengthen and clarify the residual clause so that it can more expressly support judicial recognition of technologically driven, novel fair use scenarios, while preserving the existing twelve-category framework as the baseline. Second, key statutory thresholds should be given more operational content—especially the two constraints that the use must not conflict with the normal exploitation of the work and must not unreasonably prejudice the legitimate interests of the right holder. Clearer definitions would make it easier for courts to separate permissible transformative reuse from infringing derivative exploitation, rather than defaulting to a mechanical checklist application. Third, if courts are already drawing on a U.S.-style four-factor inquiry in practice, legislative authorization could convert that *de facto* reasoning into a transparent and accountable standard—one that evaluates purpose, the nature of the work, the amount used, and market impact as part of a proportionality assessment—thereby reducing *ad hoc* divergence.

In parallel, the Supreme People's Court could use its interpretive tools to narrow the current variability in outcomes. Authoritative guidelines and model cases that clarify contested concepts—such as “appropriate quotation” and “educational purposes”—would help discipline arbitrary reasoning while still leaving room for case-sensitive equity in genuinely hard cases.

### 5.2. Enhancing collaborative governance mechanisms for short-form video platforms

Systemic deficiencies in copyright governance extend beyond legislative gaps. As demonstrated by empirical case analyses, a significant proportion of short-form video creators harbor misconceptions regarding copyright protections for musical works, particularly in applying fair use doctrines [10]. Judicial records reveal that most defendants did not anticipate legal liability, erroneously presuming that brief duration, limited expressive scope, or minimal sampling of pre-existing works inherently immunized their usage from infringement claims. This cognitive disconnect underscores the tension between the protection of exclusive rights and public access to cultural resources—a tension that necessitates multi-stakeholder solutions through legal literacy initiatives and institutional innovation.

First, a shift from predominantly *ex post*, case-by-case enforcement to *ex ante* centralized licensing would mark a meaningful change in governance logic. One workable route is to build a structured, tripartite arrangement among copyright collective management organizations (CMOs), multi-channel network (MCN) agencies, and platforms. Through bulk licensing and standardized royalty negotiations, such coordination can lower transaction costs in settings where music is used in

fragmented, high-frequency ways. It can also ease judicial pressure by reducing the volume of disputes that arise from mass, repeat infringement patterns, thereby supporting more stable and sustainable dissemination.

Second, platforms could introduce front-end procedures for verifying fair use claims to reduce the chilling effect created by pervasive legal uncertainty among users. A practical design would combine (i) standardized declaration templates that guide creators through a self-assessment of compliance and (ii) a two-step review pathway, in which the platform conducts an initial screen and an independent third party performs a secondary check for higher-risk cases. If implemented carefully, this kind of procedural safeguard would allow users to test the legality of a use before publication while maintaining an appropriate balance between rights protection and creative autonomy.

Third, a more flexible licensing layer—such as broader uptake of Creative Commons (CC) licensing—could soften the default “all rights reserved” posture that shapes many reuse decisions. By encouraging rightsholders to offer voluntary, non-exclusive permissions through standardized terms (while preserving attribution expectations and, where relevant, remuneration arrangements), platforms can increase circulation efficiency without undermining core economic interests or moral rights. Over time, this would also bring China’s copyright governance closer to widely used global open-licensing practices, helping to align creative incentives with socially valuable reuse.

## 6. Conclusion

The rapid expansion of the short-form video industry has brought long-standing copyright assumptions into direct friction with digital-era modes of creation and distribution. Much of the conflict arises from a structural tension: short-video production relies on low-friction reuse and circulation, while copyright law is built around strong exclusive rights and clearly bounded exceptions. This strain is intensified by platform recommendation systems that can rapidly scale exposure, and by users’ fragmented, modular practices of incorporating music—together increasing infringement risk and making the application of legal standards more contested in practice.

Addressing this tension calls for a more adaptive governance framework that combines interventions across multiple levels. At the legislative level, rules should be updated to better reflect technological change and the realities of platform-mediated dissemination. At the judicial level, doctrines and reasoning standards should be refined so that transformative reuse can be assessed in a more calibrated way without eroding rights protection. In parallel, platform governance can be strengthened through technical and procedural tools—for example, attribution-supporting technologies (including blockchain-based solutions where appropriate), clearer compliance workflows, and user-facing guidance. Finally, streamlined licensing pathways should be institutionalized to reduce transaction costs and lower the volume of disputes driven by repetitive, high-frequency reuse.

Two directions merit priority in future research. The first is how to articulate a workable threshold for “human originality” in AI-generated music within settings of algorithmic or human-machine co-creation. The second is how to design cross-border coordination mechanisms—such as multilateral copyright pools—that can support short-form video distribution across divergent legal regimes. In the long run, a stable balance between rights protection and industry innovation will depend less on any single reform than on iterative rulemaking, effective techno-legal interoperability, and practical forms of international regulatory alignment.

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