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The Improvement Path of the Fair Use System of Barrier Free Film and Television in China

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Abstract. With the growing demand of visually impaired groups for barrier free film services, how to improve the fair use system of barrier free film and television has been widely concerned, but the current improvement path still has shortcomings: First, there are conflicts in the legislative interpretation of "dyslexic", which are mainly reflected in the inconsistency of the concept of "dyslexic" and the scope of "dyslexic". Second, there are doubts about whether the fair use system is applicable to barrier-free film and television works. Third, whether the barrier-free film and television service field can take the lead in trying to introduce the "commercial availability exception" system. This paper analyzes the improvement path of the fair use system of barrier-free film and television in China, and comes to the following conclusions: First, the definition of "dyslexia" should adopt a double-layer definition system of core standards combined with dynamic supplements. Second, clarify the scope of "barrier-free works". Third, the application of the exception of commercial availability should be carefully considered in combination with the phased characteristics of China's social development.

Keywords: Barrier Free Film, Television Fair Use, The Marrakech Treaty

1. Introduction

On May 5, 2022, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (hereinafter referred to as the Marrakesh Treaty) entered into force in China. In order to protect tens of millions of people with dyslexia, China has successively revised the Copyright Law of the People's Republic of China (hereinafter referred to as the Copyright Law) and issued the Interim Provisions on Providing Works to Print-Disabled Persons in an Accessible Manner (hereinafter referred to as the Interim Provisions). The data shows that the visually impaired group has a strong demand for watching movies. The theater has a total of 140,000 visitors and 350,000 visits from September to November 2024, and the average daily app access time of visually impaired users is twice as long as that of Jianshi users [1]. The demand of visually impaired people for barrier-free film and television services in China has shown a significant growth trend. In order to better balance the legal interests of visually impaired groups and copyright owners, and promote the development of China's barrier-free film and television industry, the improvement of China's barrier-free film and television service system is

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imminent. This article will start from the existing problems of the fair use system of barrier-free film and television in China, and put forward the improvement path.

2. Dilemma of the fair use system of barrier free film and television in China

In the judicial practice of transforming the application of the Marrakech Treaty, Chinese law places barrier free reading under the system of fair use. China has gradually clarified the meaning of the concepts of "dyslexic" and "barrier free format" in its legislation, as well as the restrictions on the rational use of barrier free reading. However, there is room for improvement.

2.1. Conflict of legislative interpretation of "dyslexia"

In the process of judicial practice, the conflict of legislative interpretation of "dyslexia" has caused obvious obstacles to the accurate understanding of the meaning of "dyslexia", and further hindered the work of barrier free film and television user authentication.

2.1.1. Inconsistent concept of "dyslexic"

The copyright law does not specifically explain the connotation of "dyslexia". It was explained in the subsequent Interim Provisions that "it refers to the visually disabled and those who cannot read normally due to visual defects, perceptual barriers, physical disabilities, and other reasons" [2]. However, the Regulation on the Protection of the Right of Communication to the Public on Information Networks, which came into force in 2013, limits dyslexia to the blind, and has not yet been amended and is currently effective [3]. The Interim Provisions are departmental rules, while the Regulation on the Protection of the Right of Communication to the Public on Information Networks is an administrative regulation with higher effectiveness. From the perspective of the intention of the legislature, the understanding of the concept of "dyslexia" in the right of information network communication only refers to the blind. This is inconsistent with the original intention. The essence of the new interim provisions is to more effectively promote the implementation of the Marrakech Treaty in China. Moreover, at present, most people with dyslexia mainly use the information network to obtain barrier-free works. For example, the wide popularity of barrier-free film and television works is highly dependent on information network transmission. If the regulations are not amended, the scope of people with dyslexia will still be restricted, which will make it difficult for many accessible works, such as accessible movies, to be provided to other people with visual impairment, thus hindering the popularization of accessible services, and will also bring great trouble and uncertainty to judicial practice.

2.1.2. Inconsistent scope of "dyslexia"

As a law, the Barrier-free Environment Development Law of the People's Republic of China has a higher level of effectiveness than the Interim Provisions and the Regulation on the Protection of the Right of Communication to the Public on Information Networks, which stipulates that the objects of barrier-free services are the disabled and the elderly [4]. As a part of the barrier-free service, whether the scope of dyslexia service should also be extended to the elderly has different explanations.

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2.2. Application of barrier-free film and television works in the fair use system

According to the definition of "published works" provided to dyslexics in the Copyright Law, the subsequent Interim Provisions did not explain whether all types of works can be provided to dyslexics in a barrier-free manner. However, the Marrakech Treaty defines "barrier-free works" as "literary and artistic works in the form of words, symbols and/or related illustrations" [5]. Its narrow definition excludes barrier free films from the scope of barrier-free works. Therefore, it is questionable whether the fair use system is applicable to barrier free film and television works.

2.3. Introduction of the "commercial availability exception" system

"Commercial availability exception" refers to the exclusion of accessible format works that can be obtained from commercial channels at a reasonable price in the market, and the fair use system is not applicable. The Marrakech Treaty allows countries to decide whether to set up "commercial availability exceptions", which is not set in China's current legislation. However, there are controversies in the academic circles: the agreement theory holds that from the perspective of purposive interpretation, when the barrier-free reading version of the work has been circulated in the market at a reasonable price and within a reasonable time, it means that there is no difficulty for people with reading disabilities to obtain the work, and naturally, there is no need to remake it. This is in line with the purpose of the Marrakech Treaty to solve the dilemma of the lack of accessible reading versions faced by dyslexics [6]. Opponents believe that there are a large number of people with barrier-free reading in China, and the barrier-free reading works are still insufficient, so the legal system is needed to clear the barriers for barrier-free reading services [7]. Therefore, it opposes the introduction of the "commercial availability exception" system. The "commercial availability exception" system is a key link in improving the fair use system of barrier-free film and television in China. As far as China is concerned, the system of "commercial availability exception" should be set according to the phased understanding of China's social development. Whether the barrier-free film and television service field can take the lead in trying to introduce the "commercial availability exception" system, so as to better balance the interests of film and television copyright owners and visually impaired people is the next content of this paper.

3. Improvement path

3.1. Definition of "dyslexia" by the double-layer definition system of core standards combined with dynamic supplement

Firstly, take the definition of "dyslexia" in the Interim Provisions as the core standard, and modify the inconsistencies in other legislation. The definition of "dyslexia" in the Interim Provisions is based on the current multidisciplinary research, such as medicine, education, etc., and the quantifiable basic indicators set from the dimensions of neural mechanism, cognitive processing, academic performance, etc., emphasizing the loss of function rather than being limited to formal identification. The identification standard should not be limited by the diagnosis of medical institutions, but should pay attention to the substantive dysfunction, and increase the interpretation space of "dyslexia" itself, so as to maintain the substantive equality of society [8]. Again, the Copyright Law of the United States holds that people with reading disabilities refer to people who are blind, have visual impairment or sensory or reading impairment, and cannot improve their visual function to the same level as those without such impairment or disability, so they cannot read printed

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works, and cannot hold or manipulate a book, or focus or move their eyes to a generally acceptable reading level due to physical disability [9]. According to the Copyright Law of Japan, a person with dyslexia is one who is difficult to express content through visual recognition due to visual impairment or other obstacles [10]. Both countries emphasize that the definition of "dyslexic" should focus on the loss of reading function and should not be limited to formal identification. The definition of "dyslexic" in the Interim Provisions of China also emphasizes the loss of reading function in essence, so taking it as the core standard is in line with the actual social development and international development trend.

Secondly, establish a dynamic replenishment mechanism. Set up a special expert evaluation committee for emerging forms of dyslexia, regularly revise and supplement the definition standards in combination with social development and technological change, or establish a typical case library in judicial practice to ensure the coverage of emerging groups. With the development of society, screen dyslexia in the digital age and attention deficit dyslexia caused by information overload may lead to dyslexia, which should be fully considered in the development process. For example, the introduction of digital citizenship theory should expand the scope of dyslexia to the elderly who have dyslexia due to the rapid development of the digital age [11].

3.2. Determination of the scope of barrier-free works

First of all, with the development of society, the demand for films and other audio-visual works is increasing, and the demand for people with reading disabilities for such barrier-free services is also increasing. Secondly, in the data age, audio-visual works are of great significance for information dissemination, which helps to eliminate reading disabilities and ensure that people with reading disabilities have equal access to information. For example, scholar Chen Hu believes that the difference between audio-visual works and written works lies in the form of expression and the corresponding audience experience. "Film" is only a material carrier, which may include audio-visual works and written works. In order to better protect the interests of visually impaired groups, what China needs most is the copyright restrictions and exceptions for film and television works [12]. Zhang Wen, a scholar, quoted Heidegger's view of "the world image age", stressed the importance of audio-visual works to bridge the digital divide, and also believed that barrier free films should be barrier free works [13]. Therefore, "published works" in the Copyright Law should be understood as all published works, not limited to written works.

3.3. Phased understanding of the system of "exception to commercial availability"

At present, the Marrakech Treaty has only been in force in China for four years, and the popularization of accessible works service is still in the initial stage. Due to the large number of people with reading disabilities and the insufficient number of accessible works, commercial accessibility exceptions should not be set. In order to promote industrial development, it is more necessary to set copyright restrictions and exceptions by law to clear the obstacles to development and encourage more subjects to invest in the development of barrier-free works.

However, according to the current development trend of barrier free works in China, especially barrier free film and television, it is necessary to set up commercial accessibility exceptions in the future. Youku Yinfa theater has more than 30,010,000 or more large subtitle films and television works, and continues to expand at the rate of 100 episodes per month. As far as the current development trend is concerned, the number of barrier-free film and television works is increasing, gradually covering almost all the visually impaired people. In order to avoid waste of resources, and

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at the same time, for the visually impaired people to obtain barrier free works more quickly, and to encourage more copyright owners to take the initiative to provide barrier free format editions to enter the cultural market, reduce the burden of public welfare, and better balance the legal interests of copyright owners and visually impaired people, China's barrier free film and television industry needs to set up a commercial accessibility exception system [14]. In the current data age, barrier free film and television is faster and more diverse than traditional paper barrier free books. Undoubtedly, it can be the first to try to introduce the "commercial accessibility exception" system.

4. Conclusion

To sum up, first, it should clarify the definition of "dyslexic", emphasize the loss of reading function, and adopt a two-tier definition system of core standards combined with dynamic supplements. Second, clarify the scope of "barrier free works" in order to meet the increasing demand for barrier free reading services and better promote equality. Third, it is reasonable not to implement the commercial availability exception at the current stage due to the imperfect industrial development, but in the future, it is necessary to set it to further stimulate the enthusiasm of the main body.

In the future, the research and practice of barrier free reading and barrier-free film and television should also be continuously promoted. It should pay attention to the cultivation and education of public awareness, and improve the awareness and attention of society to "barrier-free film and television", to create a better barrier-free service environment. With the efforts of all parties, the barrier-free film and television industry will achieve more remarkable results and bring more "welfare" to more "dyslexics".

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