

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. Amid the explosive growth of the short-form video industry, the unauthorized use of musical works—central to video creation—has led to escalating copyright disputes. Grounded in China’s current copyright law framework and incorporating judicial precedents and empirical data, this study systematically examines the boundary controversies surrounding the fair use doctrine as applied to musical works in short-form videos. The findings reveal structural incompatibilities between the dynamic nature of short-form video production and the rigid, closed-list fair use system established under existing copyright law. Low success rates of fair use defenses in litigation highlight systemic tensions between legal stagnation and technological advancement. Additionally, weak user copyright awareness and inadequate platform governance mechanisms further exacerbate infringement risks. To address these challenges, this research proposes a multidimensional optimization strategy encompassing legislative, judicial, platform, and user perspectives. Recommendations include revising statutory open-ended clauses, refining the application standards of the three-step test, and unifying adjudicative criteria. Institutional innovations such as ex-ante centralized licensing and fair use pre-screening mechanisms are advocated to mitigate users’ legal risks, while flexible authorization models, such as Creative Commons (CC) licensing, are explored to balance creative incentives with dissemination efficiency. This study aims to offer both theoretical and practical insights for improving copyright governance in short-form video ecosystems, fostering a dynamic equilibrium between rights protection and industrial innovation.

Keywords: short-form video, musical copyright, fair use doctrine, boundary demarcation, platform governance

1. Introduction

In the digital era, the meteoric rise of short-form video platforms has profoundly reshaped the dissemination and consumption of musical works within new media ecosystems. As an indispensable component of short-form video content, music not only enhances users’ audiovisual experiences but also serves as a pivotal driver of platform traffic acquisition and user retention. However, the widespread use of musical works has given rise to a cascade of copyright protection

challenges, most notably ongoing controversies surrounding the demarcation of fair use boundaries for music in short-form videos.

A critical factor contributing to recurring musical copyright infringement disputes is the lack of clear boundaries between legitimate fair use and the unlawful appropriation of musical works in short-form video creation. While China's Copyright Law provides a foundational legal framework for protecting musical copyrights in this context, its applicability to short-form video platforms is limited by systemic shortcomings. The law's inherent rigidity contrasts sharply with the rapid, expansive, and diversified nature of short-form video production, resulting in structural incompatibilities. In particular, the fragmented, innovative, and highly efficient patterns of music usage inherent to short-form video creation often exceed the narrow, exhaustively enumerated fair use scenarios outlined in current copyright legislation. Moreover, the use of algorithmic recommendation technologies by short-form video platforms accelerates the speed and reach of content dissemination, further complicating copyright governance.

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].

While UGC unquestionably dominates in terms of volume, the rise of the "creator economy" has also triggered widespread copyright infringement disputes, with the unauthorized use of background music emerging as one of the most prevalent issues. According to data released by the Beijing Internet Court, between September 9, 2018, and February 28, 2022, the court accepted 2,812 copyright infringement cases related to short-form videos and adjudicated 2,026 of them [3]. A significant portion of these cases involved the unauthorized incorporation of background music into short-form video content.

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 Papitube 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 the Copyright Law specifically enumerates seventeen exclusive rights accorded to copyright holders, including but not limited to reproduction rights, adaptation rights, and the right of communication through information networks [6]. Regarding phonogram producers’ entitlements, Articles 44 and 45 delineate the rights of audio recording producers, particularly their authority to license reproduction, distribution, rental, and public communication via information networks in exchange for remuneration [7]. Notably, performers’ rights become legally relevant only when short-form video creators employ original vocal recordings in their productions.

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].

Despite legislative harmonization, empirical studies reveal systemic discrepancies in judicial interpretation. An analysis of 136 adjudicated cases—retrieved from China Judgments Online using the keywords “fair use” and “short-form video” under disputes concerning “infringement of communication through information networks”—shows that only 13.97% of cases strictly applied statutory provisions, while more than 50% deviated from legislative frameworks, notably adopting extraneous standards such as the U.S.-style four-factor fair use test (purpose, nature, amount, market effect) [12]. This jurisprudential fragmentation underscores the absence of a unified adjudicative standard, thereby complicating compliance predictability for creators and platforms alike.

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

China’s fair use doctrine, functioning as a safety valve within the copyright regime, consists of statutory exceptions and restrictive arrangements designed to counterbalance the expansion of copyright protection. In practice, this doctrine is frequently invoked as a legal defense, yet successful cases remain exceedingly rare. Through case screening in the Peking University Legal Database (PKULAW), the author identified 16 adjudicated disputes involving background music use in short-form videos. Among these, courts accepted the “fair use” defense in only two instances, ruling non-infringement. This empirical evidence underscores the complex practical challenges that confront the judicial application of the fair use doctrine in resolving copyright disputes over musical works within China’s short-form video ecosystem.

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

Despite the introduction of a general fair use provision in the 2020 Copyright Law, China’s legal system continues to confine permissible exceptions to 12 exhaustively enumerated categories, maintaining a rigid closed-list structure [13]. Judicial practices further exacerbate these limitations, as courts typically reject fair use defenses that fall outside the statutory categories, reflecting a restrictive interpretation inconsistent with the doctrine’s inherently flexible nature. This closed-list approach demonstrably fails to accommodate the technical and creative realities of short-form video production.

Consider the prevalent practice of fragmented musical adaptations: creators frequently clip, remix, or modify full-length musical works to align with visual narratives. Such transformative uses—often involving brief, innovative excerpts—complicate infringement assessments, as the brevity and creative repurposing of content blur conventional fair use boundaries. Concurrently, the exponential rise in third-party music usage across platforms further intensifies definitional ambiguities.

Nevertheless, within the dual policy objectives of incentivizing creation and balancing public interest, it is indisputable that certain non-enumerated uses may warrant recognition under fair use if

they align with the doctrine's equitable essence. This necessitates invoking the open-ended normative supplementation function inherent in copyright law, even in the absence of explicit statutory coverage.

Furthermore, infringement disputes frequently involve multiple parties, including copyright holders, content creators, and platform operators. Judicial precedents show that platform operators often adopt layered defense strategies: first, by attributing content uploads to end users; second, by asserting technological neutrality as mere information storage service providers; and third, by denying joint liability on the grounds of lacking direct infringement or subjective fault.

Cases 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] exemplify these defenses, highlighting systemic ambiguities in delineating rights and obligations among stakeholders and complicating liability allocation in infringement disputes.

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.

Furthermore, judicial overreliance on formulaic fair use analysis has emerged as a structural deficiency requiring critical examination [12]. In adjudicating fair use claims, Chinese courts have often applied standardized reasoning across diverse cases—a "one-size-fits-all" approach—failing to engage meaningfully with defendants' specific arguments. This results in insufficient analysis of statutory factual elements and inadequate consideration of the parties' submissions. For instance, in the copyright infringement dispute between a Guangzhou company and Wenling Company et al., the defendant asserted that their use qualified as fair use under both the "three-step test" and the "four-factor analysis," specifically arguing: (1) that the excerpted 19-second portion from the plaintiff's 3-minute-21-second musical work represented a non-substantial reproduction lacking core melodic or lyrical elements, and (2) that the fragmentary use of the music as background audio did not impair

the work's market value or restrict its dissemination potential [18]. Nevertheless, the Beijing Internet Court issued an infringement ruling without 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

China's current copyright regime, as codified in Article 24 of the Copyright Law, adopts a rigidly enumerative approach to fair use, delineating twelve exhaustive scenarios supplemented by a residual clause. While ostensibly modeled on the exception provisions of the Berne Convention [19], this rule-bound paradigm increasingly fails to accommodate emerging technological realities. Judicial implementation reveals structural deficiencies: courts frequently render binary determinations (total exemption versus infringement), disregarding nuanced applications in digital contexts such as non-expressive use or de minimis sampling. This doctrinal inflexibility not only undermines legal predictability but also risks jurisprudential overreach, as evidenced by misinterpretations of normative thresholds and inconsistent discretionary practices. Empirical analyses confirm that Chinese courts demonstrate a systemic reluctance to uphold fair use defenses for musical works in short-form videos—a tendency that may constitutionally chill transformative creativity.

To reconcile statutory rigidity with digital innovation, three interlocking reforms merit prioritization. First, legislative amendments should recalibrate the residual clause to explicitly authorize judicial recognition of novel fair use forms driven by technological evolution, while retaining the existing twelve-category framework. Second, operational definitions must be codified to clarify ambiguous statutory thresholds—particularly those concerning the dual prohibitions against conflict with normal exploitation and unreasonable prejudice to rights holders' interests. Such clarification would enable courts to distinguish legally permissible transformative reuse from infringing derivative works, moving beyond the mechanical application of existing provisions. Third, the formal incorporation of the U.S.-derived four-factor proportionality test (assessing purpose, nature of the work, amount used, and market impact) through legislative authorization could elevate these judicially developed criteria into binding statutory standards.

Concurrently, the Supreme People's Court should exercise its interpretative authority to issue binding guidelines and model rulings that clarify contested concepts such as "appropriate quotation" and "educational purposes." This jurisprudential harmonization would help curb arbitrary adjudication while preserving judicial flexibility to address case-specific equities.

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, transitioning from *ex post* fragmented enforcement to *ex ante* centralized licensing represents a critical paradigm shift. Establishing tripartite frameworks involving copyright collective management organizations (CMOs), multi-channel network (MCN) agencies, and platforms could operationalize bulk licensing agreements and royalty rate negotiations. Such institutionalized coordination would reduce transaction costs in fragmented usage scenarios while mitigating judicial burdens arising from mass infringement disputes, thereby fostering sustainable content dissemination.

Second, implementing preemptive fair use verification mechanisms could counteract the pervasive chilling effect caused by users' legal uncertainty. Platforms should develop standardized declaration templates that enable creators to self-assess compliance, coupled with a two-tier review system combining platform-level preliminary screening with independent third-party reassessment. This procedural safeguard would empower users to confirm legality prior to publication, striking a balance between rights protection and creative freedom.

Third, institutionalizing flexible licensing architectures—such as adopting Creative Commons (CC) licensing protocols—could recalibrate China's default “all rights reserved” paradigm. By incentivizing creators to voluntarily authorize non-exclusive uses through standardized agreements (while retaining attribution and remuneration rights), such frameworks would enhance content circulation efficiency without compromising core economic or moral rights. This evolution would align China's copyright ecosystem with global open-access trends, reconciling incentives for creation with public reuse imperatives.

6. Conclusion

The exponential growth of the short-form video industry epitomizes the escalating tensions between digital-era content dissemination and traditional copyright paradigms. This conflict stems from a structural imbalance between freedom of expression and the monopolization of exclusive rights, exacerbated by platforms' algorithmic recommendation mechanisms and users' fragmented usage patterns, which collectively amplify infringement risks and introduce jurisdictional ambiguities in legal application.

Resolving this impasse requires the construction of an adaptive governance framework that integrates multidimensional interventions: modernizing legislative frameworks to accommodate technological change; refining judicial doctrines to balance transformative reuse with rights protection; deploying technological safeguards (e.g., blockchain-based attribution systems); advancing public copyright literacy; and institutionalizing streamlined licensing protocols.

Future research must prioritize two frontier issues: first, redefining the threshold of “human originality” for artificial intelligence-generated music (AIGC) within algorithmic co-creation paradigms; second, establishing transnational copyright coordination mechanisms—such as multilateral copyright pools—to harmonize cross-border short-form video distribution across divergent legal regimes. Achieving sustainable synergy between copyright protection and industrial innovation ultimately depends on iterative rulemaking, techno-legal interoperability, and global regulatory alignment.

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