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# Balancing Copyright Protection of Journalistic Works and Freedom of Expression in Self-Media: Postprint

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## Abstract

**Purpose:** To identify the conflicts between copyright protection of news works and freedom of expression in self-media, and to explore effective approaches for balancing these two interests, thereby coordinating the public and private interests underlying news, promoting the healthy development of the journalism industry, and fostering a new paradigm for the self-media sector.

**Method:** Based on a systematic review of existing literature and premised on clarifying the attributes of self-media, this article examines the balance between copyright protection of news works and freedom of expression in self-media.

**Result:** News works exhibit dual attributes as both information and commodity. The production of news works as commodities necessitates investment of various resources, while news works as information relate to the public's right to know and freedom of expression, influencing public opinion.

**Conclusion:** User-generated content created by the public for participation in public life is largely non-commercial in purpose and may appropriately be incorporated within the scope of fair use; commercially produced content pursued as a profession possesses commercial attributes and should be subject to more stringent regulation through legal, technological, and institutional mechanisms.

## Full Text

### Preamble

**ChinaXiv Partner Journal: Balancing Copyright Protection for News Works and Freedom of Expression for Self-Media**

(Shanghai Documentary College, Shanghai University of Political Science and Law, Shanghai 201600)

## Abstract

**Objective:** This paper aims to clarify the contradictions between copyright protection for news works and freedom of expression for self-media, explore effective methods for balancing these two interests, and coordinate the public and private interests behind news to further promote the healthy development of the journalism industry while fostering new developments in the self-media sector.

**Method:** Based on a review of existing literature and premised on clarifying the attributes of self-media, this article reflects on the balance between copyright protection for news works and freedom of expression for self-media.

**Result:** News works possess dual attributes as both information and commodity. As commodities, news works require substantial resource investment in production, but as information, they concern the public's right to know and freedom of expression, influencing public opinion.

**Conclusion:** User-generated content for public participation in civic life mostly lacks profit motives and may be included within the scope of fair use; commercially-produced content created as a profession has profit attributes and should be regulated through legal, technical, and institutional mechanisms.

**Keywords:** news works; copyright protection; self-media; freedom of expression; balance

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Due to the special nature of news works, lagging copyright mechanisms, and concealed technological infringement, copyright violations occur frequently, harming the interests of copyright holders and undermining the healthy development of the journalism industry. As early as 2016, the China Press and Publication Research Institute examined this issue through an in-depth survey on copyright protection of news works in traditional media. Results showed that while most newspapers, journals, and broadcasting organizations agreed in principle that news works should be protected, most failed to take active protective measures in practice and lacked sound copyright protection mechanisms [1]. When infringed, news media tend to prefer negotiation over legal action due to time and cost considerations. Existing research therefore focuses on infringement, exploring better protection methods. One study (Wang Yinhang, 2022) analyzes

legal issues such as the scope of copyright application and jurisdiction over infringement disputes, arguing that establishing fair use systems and innovative litigation jurisdiction could better protect news works in the self-media era [2]. However, how can we guarantee freedom of expression for self-media? Where are the boundaries of copyright protection? How can we better coordinate their relationship?

The concept of self-media derives from “We Media.” Domestic scholar Yu Hongmei traced the views of foreign scholars Chris Willis, Dan Gillmor, and Shayne Bowman, noting that the core connotation of “We Media” is “participatory journalism,” emphasizing public participation in news production and distribution amid technological transformation, oriented toward rational, equal, fair, and just public life [3]. However, when “We Media” was translated into the Chinese context as “self-media” (自媒体), its meaning underwent changes and no longer fully equates to the English term. Most domestic industry reports highlight self-media business models, reflecting strong commercial discourse around profit and operations that gradually diverges from journalistic discourse on participatory dialogue and democratic life. In reality, self-media development exhibits distinct characteristics of autonomy, simplicity, and personalization [4]. Broadly speaking, self-media divides into two categories: user-generated content oriented toward the English concept of “We Media,” which lacks profit motives and serves public participation in civic life; and commercial content creation for profit, representing an important livelihood for self-media professionals.

## 1. Boundaries of Free Expression Based on the Concept of Self-Media

If user-created content falls within private use, copyright infringement rarely arises [5]. However, much current self-media involves secondary creation based on news works for commercial gain, which in fact exceeds the boundaries of free expression. The scope of self-media freedom of expression depends on its orientation. If oriented toward ordinary users participating in public life, its freedom of expression is broader and generally does not cause infringement. But if oriented toward self-media professionals for commercial purposes, its freedom of expression requires clear boundaries; otherwise, it threatens copyright protection for news works.

## 2. Copyright Law Protection for News Works

The current Copyright Law serves as the primary legal basis for protecting news works. A study (Shen Zhengfu, 2021) comparing three versions of the Copyright Law found that the first two amendments minimally involved journalism and communication works, while the third amendment primarily addressed the journalism field, including increasingly complex issues concerning audiovisual works, current affairs news, and works created in the course of employment [6]. Although the third revised Copyright Law adjusted concepts such as audiovi-

sual works, definitions of current affairs news and its copyright protection, and rights for works created in the course of employment, deficiencies remain, such as clarifying whether self-media should be included in fair use provisions. Due to insufficient constraints, infringement issues exist in self-media information production and dissemination, including copyright infringement of news works. Currently, the phenomenon of “manuscript washing” by self-media is rampant, with divergent views. Some media professionals argue manuscript washing is acceptable if not for purely commercial purposes. However, research (Wang Yafen et al., 2019) contends that manuscript washing is essentially plagiarism, albeit concealed through formal transformation, and should be legally regulated [7]. Regulating manuscript washing represents an important manifestation of copyright protection, while freedom of expression for self-media operates within a legal framework. Existing research primarily focuses on protecting news work copyrights or examines duty-of-care standards for commercially-oriented self-media, with less discussion on coordinating copyright protection with freedom of expression across different types of self-media.

### **3. Characteristics of News Works and Their Impact on Copyright Protection**

#### **3.1 Diminishing Marginal Utility Highlighting the Importance of Copyright Protection**

As a commodity, news works follow the law of diminishing marginal utility: within a certain period, as consumption of a news product increases, the marginal utility gained continuously decreases. Unlike food or daily necessities, news works exhibit particularly obvious diminishing marginal utility. Once audiences consume a news work and obtain relevant information, they rarely consume it again. Moreover, news works are highly time-sensitive, making them difficult to consume repeatedly. Therefore, copyright protection must capture the audience’ s first consumption; otherwise, copyright holders’ interests will be severely damaged.

#### **3.2 Significant Public Interest, Fair Use Remains Controversial**

News is characterized by informativeness, documentary nature, authenticity, and timeliness. While satisfying the public’ s right to know, news also serves as an important pathway for realizing freedom of speech, demonstrating significant public welfare characteristics. In the internet environment, news works spread more widely but face more severe infringement, particularly from new media infringing on traditional media. Article 24(1)(iii) of China’ s Copyright Law addresses the scope of fair use, but controversy exists regarding the subjects of fair use—for example, whether self-media is included in “and other media.” One study (Lai Xiaopeng, 2021) argues that fair use subjects should include not only traditional media such as newspapers and broadcasting organizations but also internet news information service-licensed media [8]. Another study

(Sun Haoliang, 2018) suggests that based on the essential attributes of self-media as social tools, self-media could be included in fair use subjects without affecting copyright holders' economic interests [9]. In fact, whether self-media can be included in fair use depends on their attributes. If they function with civic participation attributes such as social interaction and opinion expression, inclusion is justified. However, if self-media has commercial intentions, inclusion requires further consideration.

### **3.3 Difficulty in Determining Originality, Insufficient Copyright Protection**

Compared with other works such as literature or architecture, news works focus on presenting facts and objective reporting, which creates a basis for judging them as having low originality. The revised Copyright Law changed "current affairs news" to "simple factual messages," emphasizing that this law does not apply to simple factual messages. But how should simple factual messages be judged? Do simple factual messages not embody the investment of human, material, and financial resources by journalists? The argument is not to include simple factual messages within copyright protection scope but rather to recognize that disseminating factual information inevitably involves intellectual labor in selection and arrangement. When judging simple factual messages, we should not one-sidedly raise originality standards due to news works' fact-heavy, expression-light format but should treat them equally with artistic and literary works. For the journalism industry, failure to protect corresponding copyrights will greatly reduce creative enthusiasm and seriously hinder positive development. Copyright protection for news works safeguards the interests of news organizations and journalists while satisfying the public' s news needs.

## **4. Conflict Between Copyright Protection for News Works and Freedom of Expression for Self-Media**

In the new communication ecology, everyone has gained opportunities to publish content, with various self-media platforms emerging rapidly and public creative enthusiasm surging, promoting freedom of expression. However, this simultaneously creates challenges in governing copyright infringement of user-generated content. The conflict manifests in mutual restrictions. On one hand, copyright protection for news works, driven by profit concerns, limits the space for self-media freedom of expression. On the other hand, self-media' s pursuit of freedom of expression damages the copyright interests of news works. "Increasingly, people acknowledge the conflict between copyright and freedom of expression, particularly that the former' s obstruction of the latter is unavoidable" [10]. Copyright' s private nature clearly differs from the public nature of freedom of expression. Protecting copyright means that others cannot arbitrarily use news works without copyright holders' consent or outside fair use provisions. Currently, the conflict primarily centers on commercial interests, embodied in the contradiction between commercially-oriented self-media free-

dom of expression and copyright protection. For example, the common practice of “manuscript washing” constitutes infringement. Self-media uses freedom of expression as a shield to modify original content. Although the resulting article appears different, its core content remains identical, representing invisible plagiarism. Some content after manuscript washing becomes even more popular than the original, severely damaging copyright holders’ interests. Insufficient platform supervision and lack of gatekeeping mechanisms mean that manuscript washing infringes upon legitimate rights and interests, undermining the healthy ecosystem of internet content creation. Particularly with artificial intelligence technology, intelligent manuscript washing is growing rampantly. Using intelligent software to wash others’ original works appears cheaper and more efficient but severely damages the healthy ecosystem of copyright protection.

## 5. Reflections on Balancing Copyright Protection for News Works and Freedom of Expression for Self-Media

### 5.1 Legal: Adhering to the Legislative Principle of Balanced Interests

The latest Copyright Law’s Article 24(1)(iii) changed “current affairs news” to “news,” expanding the scope of fair use and further safeguarding citizens’ right to know. Additionally, the clause involves “inevitable reproduction or quotation,” where “inevitable” should be understood as meaning that without reproducing or quoting the work, public understanding of news events would be significantly compromised—not that if an alternative method exists to “avoid reproduction or quotation,” the media’s reproduction constitutes infringement. The latest Copyright Law changed “author’s statement” to “copyright holder’s statement,” and combined with provisions on copyright ownership of special works created in the course of employment belonging to legal or non-legal entities, further protects the legitimate rights and interests of media organizations. One study (Chen Zhimin et al., 2017) emphasized redefining the connotation and denotation of fair use for news reporting based on new media development trends, proposing that fair use subjects should include internet users in the new media environment and relaxing restrictions on the scope of “inevitable reproduction or quotation” to promote vigorous development of the new media industry [11]. While copyright infringement disputes involving self-media exist, non-profit-oriented self-media primarily functions with social attributes such as social interaction and speech expression, safeguarding citizens’ freedom of speech. Therefore, under certain conditions, non-profit self-media can be included in fair use scope to legally balance copyright protection and freedom of expression.

### 5.2 Technical: Rational Application of Digital Technology

Foreign news platforms such as Civil and PressCoin have long utilized digital technology to improve development. Domestically, Xinhua News Agency previously launched digital technology application projects such as “Xinhua Zhiyun Blockchain Copyright Protection,” fully demonstrating the important value of

blockchain and other digital technologies in news practice. Coordinating copyright protection and freedom of expression can also be facilitated through technical means such as blockchain and copyright filtering. First, use blockchain technology to preserve complete production records of news work copyright holders, enabling copyright registration and certification, so that even when self-media obtains news works through web crawlers, key original information is retained. Second, establish a news works circulation market based on blockchain and other digital technologies, allowing both traditional media and self-media to better understand legal terms and facilitate creation and management through smart contract programs. Additionally, self-media platform service providers should establish news works databases and build real-time network monitoring prevention systems using modern technologies such as cloud computing and big data. Use modern copyright filtering technology to scan user-uploaded news works to confirm whether infringement occurs. If infringement is detected, stop related content dissemination and require users to handle it properly. In the past, accountability mainly occurred after infringement, but the future should focus more on prevention. Rational application of blockchain and other digital technologies not only protects copyright but also enables self-media to reasonably achieve freedom of expression through technical regulation, avoid touching copyright red lines, and further purify the self-media industry ecosystem.

### 5.3 Mechanism: Establishing a Win-Win Cooperation Mechanism

The openness of the internet creates dilemmas for copyright protection but also provides effective breakthroughs. Copyright protection should not excessively block and intercept but should achieve a combination of guidance and blocking through reasonable interest distribution to promote cooperation between traditional media and self-media. Platform parties play a bridging role in establishing win-win cooperation mechanisms. One scholar (Zhu Hongjun, 2020) emphasized the importance of platform gatekeeping mechanisms based on copyright infringement issues in social media spaces, arguing that social media platforms should actively assume more responsibility by establishing dual-dimensional gatekeeping mechanisms of “prevention beforehand” and “severe punishment afterward,” while noting the complexity of establishing boundaries for gatekeeping responsibilities [12]. Establishing win-win cooperation mechanisms depends on self-media platforms’ gatekeeping functions. For platform parties, fulfilling reasonable duty-of-care obligations while extracting certain commissions in facilitating cooperation can enhance enthusiasm for prevention and post-facto accountability. One study (Peng Guibing et al., 2019), using the “Gan Chai Lie Huo Incident” as an example, examined manuscript washing behavior from legal and media professional ethics perspectives, arguing that the manuscript washing controversy is essentially an interest dispute between self-media and mainstream media [13], and that establishing win-win cooperation mechanisms offers an effective path for coordinating interests. For news media, the intention is not to restrict others’ access to news works. Social media platforms such as WeChat and Douyin serve as the primary foundation for self-

media development. Could these platforms act as third-party intermediaries to promote cooperation between news media and self-media, such as by establishing licensing and payment mechanisms? This way, copyright holders can obtain economic benefits while commercially-oriented self-media gains freedom to use news works. After all, balancing interests among all parties promotes healthy development of the media ecosystem.

These reflections on balancing copyright protection and freedom of expression primarily concern commercially-oriented self-media. After all, non-profit self-media tends toward social functions such as participating in discussions and expressing opinions, with usage mostly in private domains that does not infringe upon copyright holders' rights. The China Internet Network Information Center (CNNIC) mentioned "online news self-media" in its 42nd Statistical Report [14], affirming this sector's development. In fact, self-media development enriches news practice and has positive significance for information circulation and opinion expression. Overall, protecting copyright for news works does not necessarily damage freedom of expression for self-media. User-generated content with public expression attributes can be included in fair use scope, while protecting copyright can regulate the development of commercially-oriented self-media.

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**(Responsible Editor: Zhang Xiaojing)**

*Note: Figure translations are in progress. See original paper for figures.*

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