The Legitimacy of MOOC Operating Mechanisms under Fair Use Doctrine: Postprint

Authors: Jiang Nan, Wang Yihuai

Date: 2023-10-08T00:00:00+00:00

Abstract

[Purpose / Significance] MOOCs are characterized by openness, online delivery, and large-scale participation. While bringing tremendous transformation to social education, they also entail significant copyright risks. This study analyzes the legitimacy and specific pathways for applying the copyright fair use doctrine to the MOOC education model, aiming to better facilitate the dissemination and development of MOOC education through copyright legal protection.

[Method / Process] Based on the interest balancing value theory and law and economics, and incorporating the three-step test of the Berne Convention and the four-factor test of U.S. copyright law, this paper provides legal-theoretical justification and specific procedures for the appropriate adaptation of China's copyright fair use system as applied to MOOCs.

[Result / Conclusion] China's existing legislative and judicial model for the copyright fair use system cannot provide a sufficient interpretive framework for the use of others' works within the MOOC education model. It is necessary to further conduct an appropriate analysis of the legal pathways for applying the fair use doctrine to MOOCs by incorporating foreign experience and specific case law.

Full Text

Preamble

ChinaXiv Cooperative Journal: Academic Exploration

Research on the Legitimacy of MOOC Operating Mechanisms from the Perspective of Fair Use System

Jiang Nan[1], Wang Yihuai[2]

Abstract

[**Purpose/Significance**] MOOCs (Massive Open Online Courses) are characterized by their openness, online delivery, and large-scale participation. While bringing tremendous transformation to social education, they also face substantial copyright risks. This study analyzes the legitimacy and specific pathways for applying copyright fair use provisions to MOOC educational models, aiming to enhance the legal protection framework and thereby facilitate the dissemination and development of MOOC education. [**Method/Process**] Grounded in interest balance theory and law-and-economics principles, and incorporating the three-step test from the Berne Convention and the four-factor test from U.S. copyright law, this paper provides legal justification and concrete procedures for appropriately adjusting China's fair use system to accommodate MOOC applications. [**Result/Conclusion**] China's existing fair use legislation and judicial models cannot provide an adequate interpretive framework for the use of copyrighted works within MOOC educational models. It is necessary to further analyze the appropriate legal pathways for MOOC fair use by drawing on foreign experiences and specific case law.

Keywords: MOOC; fair use; operational mechanism; three-step test
Classification Number: D920.0
Citation Format: Jiang N, Wang YH. Research on the legitimacy of MOOC operating mechanisms from the perspective of fair use system [J/OL]. Knowledge Management Forum, 2019, 4(6): 351-358 [citation date]. http://www.kmf.ac.cn/p/192/.

MOOC (Massive Open Online Course) represents a large-scale online open course model that leverages network platforms to provide high-quality teaching resources to participants worldwide while emphasizing interactive engagement among learners, platforms, instructors, and institutions. Over the past three years, numerous domestic platforms centered on this innovative educational model have emerged, including XuetangX, Chinese University MOOC, and MOOC College (Guokr.com), with corresponding mobile internet clients also gaining substantial followings. The MOOC model has revolutionized the traditional structure of higher education by tightly connecting universities, enterprises, and learners through online platforms, transforming "small campuses" into "societal schools" and enabling more comprehensive utilization of high-quality educational resources across society.

However, alongside this educational transformation, MOOCs' open, online, and large-scale characteristics create complex interest entanglements in the production and utilization of course resources, posing significant copyright risks that challenge China's existing copyright limitation systems. Copyright law maintains a delicate balance: protecting copyright holders' interests through exclusive rights while safeguarding public interests through limitation systems. This dual approach represents both a crucial mechanism for achieving copyright law's value of interest equilibrium and a concrete manifestation of intellectual prop-

erty system's sophisticated design. In traditional university classroom teaching, instructors inevitably use copyrighted works when developing course materials, but can rely on fair use provisions to avoid infringement liability. MOOC education, as an emerging phenomenon with operational mechanisms substantially different from traditional education, raises questions about whether using copyrighted works in this context qualifies for fair use defenses. Without enhanced legal protection for MOOCs from the perspective of limiting copyright holders' rights, the further development of MOOC education will inevitably be constrained. This paper specifically analyzes the legal pathways for MOOCs to navigate copyright risks through the fair use system.

1. Copyright Challenges Facing MOOCs: Course Resources and Operational Mechanisms

Student-instructor interaction in MOOC courses is organized through network infrastructure and connected by course resources, creating a knowledge transmission relationship similar to face-to-face teaching. Among these elements, course resources—commonly known as "courseware"—represent the most critical component of the MOOC educational model. MOOC course resources are essentially "open educational resources." At the 2002 forum on "The Impact of Open Courseware on Higher Education in Developing Countries," UNESCO defined open educational resources as teaching, learning, and research materials residing in the public domain or released under intellectual property agreements that permit free use and reuse by others. These digital materials encompass various forms of educational information including text, images, audio, video, and software. Through pedagogical techniques, authors combine these materials into complete courses disseminated via databases, video platforms, or information networks. MOOC courses typically include comprehensive materials such as courseware, video lectures, quizzes, and exercises that systematically reflect the course's teaching philosophy, design concepts, and instructional planning.

MOOC course resources, preserved as audio-visual recordings or computer software, primarily consist of text, video, images, and instructors' oral explanations of course materials. These resources possess originality and reproducibility, qualifying them as "works" under China's Copyright Law and thus warranting copyright protection and regulation. In the big data environment, even a single short MOOC course requires substantial copyrighted resources including text, images, video, and references. These course materials generally originate from three sources: works created by the course developers themselves, works in the public domain with open copyright characteristics, and works legally copyrighted by others. In practice, obtaining such complex and fragmented copyrighted resources entails extremely high time and economic costs for course developers seeking authorization. If course developers were permitted to extensively use others' works for MOOC creation based on fair use principles and disseminate them through information networks, the large-scale and open nature of MOOCs would inevitably trigger numerous copyright disputes, making

their unique operational mechanisms an unavoidable and urgent issue requiring resolution on their copyright development path.

Some scholars argue that "the operational mechanism of an educational model is driven by the composition of internal elements within different systems and the dynamic interactions among them, where internal elements refer to operational subjects and sources of motivation." In China's current MOOC educational model, operational subjects include government functional departments, universities and research institutions, relevant enterprises, and individual instructors, while sources of motivation primarily encompass policy drivers, market interests, social culture, and value realization. Based on operational subjects, this paper categorizes MOOC platforms into three types: policy-driven platforms led by government, university-led MOOC platforms, and enterprise-led platforms operated by platform service providers.

The profit income of government and university-led MOOC platforms is mainly used for platform maintenance, long-term high-quality development of university MOOC courses, and incentives for faculty course development, thus maintaining a public welfare nature similar to traditional higher education. Enterprise-led platforms, by contrast, are motivated by market interests. Taking the Zhihuishu platform as an example, it is owned by Shanghai Excellence Ruixin Digital Technology Co., Ltd. Beyond profit models such as credit certification, headhunting cooperation, and social sponsorship, Zhihuishu places greater emphasis on obtaining additional profits. Foreign platforms like Coursera and domestic platforms like Guokr.com's MOOC College have also received substantial venture capital investments.

Notably, even university-led MOOC platforms have gradually begun offering courses requiring direct purchase, a trend that exacerbates copyright risks facing MOOCs. The commercial operational mechanism of MOOCs determines that they differ significantly from previous traditional online education models. Moreover, the varying commercial operational mechanisms of MOOCs require researchers to conduct more careful categorical analysis when discussing whether course resource developers' use of copyrighted works can apply existing fair use provisions.

2. Theoretical Foundations for Applying Fair Use to MOOC Education

2.1 Balancing Fairness and Justice Values

Fair use represents a crucial copyright limitation mechanism that permits others to freely use copyrighted works under specific conditions without obtaining permission or paying remuneration. Its purpose is to prevent copyright holders from abusing their rights and thereby harming others' freedoms to learn, appreciate, and create, which would otherwise impede social, scientific, and cultural progress. The role of fair use in preventing such abuse primarily man-

ifests in safeguarding the public's creative freedom. Copyright is an exclusive or monopolistic right that enables authors to obtain benefits from their works and maintain continuous creative capacity within the boundaries established by copyright law. Conversely, without limitations on such monopolistic rights, excessive emphasis on individual authors' interests would compress public interests, leading to rights abuse. At this point, public authority intervenes through the fair use system to participate in the value distribution of social resources, ensuring that beyond protecting authors' legitimate rights and interests, work users and disseminators can also enjoy certain benefits based on public interest needs, thereby achieving social fairness and justice.

Internet development has amplified conflicts of interest within copyright law. New technologies facilitate easier dissemination and reproduction of works while simultaneously making usage patterns more complex and control more difficult. Therefore, the path to realizing copyright law's fairness and justice values in today's environment lies in granting copyright holders rights corresponding to technological development while strengthening protection of public interests by clarifying the boundaries of copyright limitation systems. The Supreme People's Court noted in its 2011 intellectual property trial opinions that to strengthen adjudication of culture-related intellectual property cases and promote cultural innovation and new cultural business formats, actively advancing the great development and prosperity of socialist culture, fair use and statutory licensing systems may be appropriately considered in special circumstances necessary for promoting technological innovation and commercial development.

For MOOCs, their low-cost, rapid dissemination, and large-scale characteristics raise concerns among copyright holders about potential profit losses. However, holding MOOC educational uses of copyrighted works liable would inevitably dampen universities' enthusiasm for actively undertaking social responsibility in MOOC creation and overlook MOOC education's tremendous role in promoting social education development and breaking educational monopolies. In the MOOC education sphere, copyright holders' private rights should appropriately yield to society's right to education—this is a requirement of fairness and justice values as well as interest balance. As we enter the digital age, the boundaries of copyright limitation systems, including fair use, should become broader rather than narrower.

2.2 Support from Cost-Benefit Theory

The key concept in law and economics is "cost and benefit," holding that legal systems should maximize social benefits as their value orientation. Works belong to a category of "quasi-public goods" with low transfer and usage costs, allowing multiple simultaneous users without mutual interference. From a property rights perspective, broader usage of works yields higher benefits for society as a whole. According to Coase Theorem's transaction cost theory, free exchange of rights can produce maximum benefit outcomes when transaction costs are zero. However, zero-cost transactions rarely exist in reality; high costs typically arise

from obtaining transaction information, contract negotiations, and contract performance, inevitably harming one party's interests under such conditions. The most reasonable transaction rule is therefore the one with the lowest transaction costs. Consequently, the optimal approach for legally defining rights boundaries is the configuration that minimizes social costs.

From a copyright limitation perspective, fair use systems may harm copyright holders' interests but generate overall social economic growth through public free access to works. Statutory licensing systems, meanwhile, reduce negotiation costs between work users and copyright holders, promote creative production, and allow copyright holders to obtain potential benefits from broader dissemination and use of their works, ultimately maximizing social benefits. In the network environment, commercial activities centered on copyright represent the necessary path to maximizing economic benefits of digital resources, while generating economic benefits from digital works requires processes such as licensing, transfer, and usage. In MOOC education, although MOOC course resource production has low marginal costs, user acquisition costs are extremely high. Only through accumulation of substantial MOOC courses can stable customer groups be established to generate revenue. If copyright limitation systems cannot reduce transaction costs in rights circulation, MOOC course resources will face massive authorization challenges, requiring course developers or copyright service agencies to negotiate with copyright holders or handle copyright issues through subsequent clearance processes, or even bear litigation costs. Conversely, applying copyright limitation systems allows course resource developers to focus on creating educational works without worries, reducing risks of market transaction failure, lowering creation costs, and generating economic benefits for both public education and copyright holders.

2.3 Rationality of MOOC Platform Commercial Operation Mechanisms

The commercial nature of MOOC platforms constitutes a prerequisite for discussing whether MOOCs can apply fair use systems. Profitability refers to obtaining profits through business operations—generating greater returns from relatively small operational investments. Enterprise profitability represents the fundamental purpose of any company. Some scholars propose judging profitability based on dividend distribution and business purposes. Under this theory, except for government-led MOOC platforms, both university-led and enterprise-led platforms constitute profit-making legal entities. For instance, XuetangX is actually controlled by Muhua Education Investment Co., Ltd., while Zhihuishu MOOC platform was established by Shanghai Excellence Ruixin Digital Technology Co., Ltd., a company invested in or controlled by natural persons. As globalization accelerates, increasingly fierce platform competition compels many MOOC platforms to strengthen brand marketing and market promotion, which may even become primary objectives for future MOOC platform institutions in educational sharing. This indicates that some commercial competitive

characteristics cause MOOC profit motives to exceed maintenance needs. Meanwhile, high-quality course production requires substantial financial and human resource investment. Relying solely on current government investment, corporate philanthropy, and university collaboration is far from sufficient to make platform courses stand out among numerous MOOC websites, and funding gaps may become constraints on MOOC education's long-term development. Additionally, regarding China's current MOOC platform landscape, the lack of effective market competition mechanisms makes it difficult for MOOC platforms to establish branded educational models, putting them at a further disadvantage compared to Western countries' standardized and branded operational models. Only through coordinated integration of cooperative acquisition of educational resources, stable revenue sources, low-cost control, and market promotion can MOOC platforms obtain economic benefits and enable universities undertaking social responsibility to have sufficient capital to operate MOOC courses—this constitutes the fundamental reason for MOOC education's commercial operational mechanisms.

However, platform nature shows no obvious correlation with the nature of usage behavior. If profitability were used as the sole criterion, all MOOC platforms would be excluded from fair use applicability. Yet a platform's commercial nature does not necessarily imply profit-driven usage of works; platform profitability does not conflict with the public welfare nature of its usage behavior. In civil and commercial law concepts, "profit-making" corresponds to "non-profit-making," while "public welfare" corresponds to "private benefit." Some public welfare non-profit legal persons also need normal economic activities to maintain operations, while some profit-making corporate legal persons actively undertake social responsibility and promote public welfare development. U.S. court perspectives merit reference: commercial organizations may use works for purposes consistent with fair use rules—for example, commercial broadcasters quoting copyrighted works in news reporting or current affairs commentary constitutes a non-profit "reasonable" purpose. Conversely, non-commercial organizations may engage in profit-driven usage, such as teachers' associations (non-profit entities) selling copies of others' computer software analyses to members, which exceeds fair use scope. Therefore, the profitability of platform usage behavior should actually be judged by whether the platform's purpose in using works is public welfare or private benefit—that is, whether economic interests and knowledge outcomes are used individually or provided for public use, depending on the balance between social value and private value ultimately generated by teaching activities. The EU Digital Copyright Directive, addressing "non-commercial use" judgments, also notes that "the nature of relevant non-commercial activities should be determined by the activities themselves."

Thus, analysis should return to the essence of platform utilization of MOOC course resources, clarifying the boundaries of profit-driven purposes based on utilization objectives to determine fair use applicability. Platform utilization behaviors can be divided into public welfare purposes and private benefit purposes, with the criterion being whether the behavior directly treats course resources

as transaction objects.

3. Legal Pathways for MOOC Education Fair Use Application

3.1 MOOC Breakthroughs to Existing Fair Use Provisions

China's fair use system has existed since the 1990 Copyright Law implementation, though with strong transplantation characteristics and unsatisfactory practical effects. The 2010 second amendment to the Copyright Law modified fair use provisions primarily to meet international convention requirements and alleviate international pressure, generating considerable controversy in academic and intellectual property practice circles. The third revision of China's Copyright Law, initiated in 2012, has progressed slowly, with fair use issues remaining a major focus and challenge. Relevant fair use provisions related to MOOC education include: Article 22(6) of China's Copyright Law, which stipulates conditions for classroom teaching fair use, permitting "translation or limited reproduction of published works for school classroom teaching or scientific research use by teaching or research personnel, provided they are not published or distributed"; and Article 6 of the 2006 "Regulations on the Protection of Information Network Transmission Rights" (amended in 2013), which permits providing others' works through information networks for school classroom teaching or scientific research to a limited number of teaching and research personnel. These rules demonstrate that China's educational fair use application has strict conditions, sufficient for promoting educational development within limited classroom teaching contexts and achieving interest balance between copyright holders and public education rights. However, with the development of internet education, particularly MOOC educational models, China's copyright limitation systems require further adjustment.

MOOC course resources typically include comprehensive materials such as courseware, video materials, quizzes, and exercises that systematically reflect teaching philosophy, design concepts, and instructional planning. Preserved as audio-visual recordings or computer software, these resources primarily consist of text, video, images, and instructors' oral explanations. MOOC breakthroughs to fair use systems mainly manifest in two aspects:

First, the breakthrough from face-to-face classrooms to online classrooms. MOOCs transform teaching from real-world face-to-face instruction to virtual instruction accessible from any cyberspace, converting small-scale limited classrooms into unlimited free learning platforms, and shifting from closed, monopolistic classroom teaching to open, shared online instruction. While this represents effective change toward breaking educational inequality, it fundamentally fails to meet Chinese law's requirements for "schools," creating obstacles for fair use application in MOOC educational models. Large-scale online classrooms also mean weakened instructor control over content, with technical measures further compressing rights holders' 维权空间 (rights pro-

tection space). More importantly, this open online teaching makes copying simpler, correspondingly increasing infringement risks and consequences.

Second, the breakthrough from schools to internet platforms. The rise of online education has spawned numerous online education institutions such as New Oriental and Xueersi. MOOC educational models bring commercial MOOC platforms into copyright disputes. MOOC platforms possess strong course construction and management capabilities, replacing the "university" role in traditional classroom teaching by assuming student management responsibilities and providing services to instructors. Except for government-led MOOC platforms, both university-led and enterprise-led platforms have commercial operational attributes, making traditional fair use system application to platforms even more challenging.

Based on the above, if fair use defenses for MOOC operational mechanisms are argued within statutory "teaching and research" provisions, it requires expansive interpretation of the "school" subject in classroom teaching fair use, simultaneously expanding the scope of "classroom" from traditional to internet-based classroom teaching. However, relevant MOOC platforms and course developers must implement technological protection measures to prevent unreasonable copying and dissemination of course resources, reducing potential losses to copyright holders. Additionally, the scope of work usage methods in classroom teaching fair use should be expanded to include provisions for digital works created as course resources. Yet copyright limitation system design must follow strict procedural requirements and always pursue public interest realization. With the development of China's internet education, particularly MOOC educational models, further adjustments to copyright limitation systems are needed.

3.2 Three-Step Test Perspective on MOOC Education Fair Use Pathways

Examining foreign legislative processes regarding copyright fair use in education, the Berne Convention and EU adopt the "three-step test" standard supplemented by member states' internal legislation. The first step specifies "in certain special cases," while the second and third steps establish general requirements that uses "do not conflict with normal exploitation of the work" and "do not unreasonably prejudice the legitimate interests of the author." As a signatory to the Berne Convention and TRIPS Agreement, China has directly incorporated the three-step test into Article 21 of the Copyright Law Implementation Regulations. The June 6, 2014 "Draft Amendment to the Copyright Law of the People's Republic of China (Submission Review Draft)" merged "do not conflict with normal exploitation of the work, and do not unreasonably prejudice the legitimate interests of the copyright holder" with the 13 specific fair use circumstances, indicating that China's fair use legislative model adopts "open enumeration" supplemented by "general interpretive principles," where general interpretive principles are based on the Berne Convention's three-step test.

However, many scholars argue that the first step of the three-step test—"certain special cases"—clearly favors judicial law-making rather than judicial law-finding, permitting adjudication beyond statutory enumeration. Although Article 43(13) of the Draft Amendment adds an "other circumstances" provision, expanding the scope of special cases, relying solely on the latter two steps for fair use interpretation would make it difficult for domestic law to adjust judicial application promptly according to new issues and could trigger conflicts between international rules and existing domestic law. The Draft Amendment's three-step test provisions directly affect infringement determinations for using copyrighted works in the internet education field. Within this system, MOOC educational model fair use applicability requires specific interpretation combined with the three requirements.

(1) Identification of Special Cases. Interpreting "special cases" according to Chinese legal provisions should analyze the 12 specific circumstances stipulated in Draft Amendment Article 43, with Article 6 ("for school classroom teaching or scientific research, translation or limited reproduction of published works for use by teaching or research personnel, but not for publication") serving as the interpretive foundation. Regarding MOOC education itself, in previous Chinese judicial decisions concerning internet education, courts have repeatedly expanded circumstances constituting fair use for educational purposes due to lack of precise legislative interpretation. In "ETS v. New Oriental School," the Beijing High People's Court ultimately determined that New Oriental School's "behavior of explaining TOEFL test questions in classrooms, despite its profit-making purpose, should constitute fair use under Article 22 of the Copyright Law and does not constitute copyright infringement." This effectively expanded the classroom teaching fair use subject from public "schools" to profit-making educational institutions. The determination of platform nature does not affect recognition of its fair use behavior—any teaching behavior based on public interest purposes can be recognized as meeting the "first step" standard of fair use determination elements.

In the 2014 Draft Amendment published by the State Council Legislative Affairs Office, the National Copyright Administration added an "other circumstances" provision to the originally exhaustive fair use categories, transforming the fair use clause from exhaustive to open enumeration, enabling courts to incorporate usage behaviors meeting general determination criteria into exceptions based on general requirements. Although this provision already facilitates interpretation for MOOCs, further optimization is still needed.

(2) Identification of Normal Exploitation and Legitimate Interests. The standards "do not conflict with normal exploitation of the work" and "do not unreasonably prejudice the legitimate interests of the copyright holder" require judges to exercise discretion regarding specific circumstances without departing from specific legal provisions' adjustment scope. These two criteria can borrow from U.S. Copyright Law Section 107 and the TEACH Act, judging based on "the effect of the use upon the potential market for or value of the

copyrighted work, the purpose and character of the use, the nature of the copyrighted work, and the amount and substantiality of the portion used in relation to the copyrighted work as a whole." From an economic analysis perspective, normal exploitation of a work is defined as the expectable benefits generated from exercising rights, including both existing and potential economic benefits. The U.S. Supreme Court, when determining potential market interests in fair use cases, held that "harm need not be actual or inevitably future-occurring, but need only be supported by sufficient evidence demonstrating the possibility of future harm." Legitimate interests of copyright holders are difficult to distinguish from normal exploitation in literal terms, so judgment should focus on interpreting "unreasonable prejudice" by combining proportionality principles to comprehensively weigh the degree of rights infringement against purpose realization, ultimately achieving interest balance.

Notably, recent U.S. trends have seen "transformative use" replace profit-purpose standards in "purpose" determination. In the Google Books case, through "transformative purpose" use, the importance of profit-driven judgment criteria was diluted. The court held that even though Google Books had strong profit characteristics and clearly exceeded proportional copying limits, its purpose was to facilitate searching and display, constituting transformation of the original work's initial purpose, and thus constituted fair use. U.S. transformative use judgments tend to affirm the reasonableness of some commercial uses, though this standard remains controversial. Some scholars argue that Chinese courts' interpretation of transformative use cannot directly copy the U.S. legal reconstruction model for fair use general determination criteria, but should instead establish legitimacy based on current statutory exception legislative systems by utilizing "commenting on works or explaining issues" fair use provisions.

Returning to MOOC education, the second step standard requires course resource developers to strictly control the quantity and quality of works used during creation. MOOC education's large-scale characteristics demand even stricter standards for work quantity control. Although MOOC video courses are typically short and use fragmented resources, MOOC platforms must still pay attention to the purposefulness of resource usage. Even if resource usage exceeds proportionality principles, uses based on commentary, explanation, or illustration purposes should still be defensible as fair use.

In summary, determining whether MOOC course resources' use of others' works during production and dissemination constitutes fair use defense should follow this procedure: apply fair use provisions in a "specific circumstances first, general principles second" sequence—first, based on the statutory "teaching and research" circumstances listed in the provisions, combine judicial practice accumulation to interpret applicable conditions within legal scope; after exhausting interpretive methods, if still not constituting "teaching and research" fair use, then apply general fair use clauses as adjudication standards.

4. Conclusion

Since the enactment of the first copyright law—the Statute of Anne—in 1709, copyright law has experienced over three centuries of history. Throughout this period, tripartite interest disputes surrounding work creation and dissemination emerging with each scientific and technological advancement have remained issues copyright law must confront. MOOCs' rise in recent years is not accidental but rather a product born from the urgent demand for educational transformation coinciding with mature technical infrastructure for big data and cloud computing. In the information age tide, MOOC educational model innovation injects tremendous vitality into contemporary educational models, substantially alleviating problems of educational resource scarcity and uneven distribution. Despite its rapid expansion posing significant challenges to China's current copyright legal system, copyright law's applicable conditions should not remain static in the network information technology context. With the emergence of commercialized MOOC education models, China's current fair use system conditions cannot adapt to MOOC education's development trends. Therefore, on the foundation of reaffirming and emphasizing legislative values of copyright limitation systems in the Internet+ education field, China should select appropriate pathways for copyright protection systems in China's Internet+ education field by examining the essence of creators' and platforms' work usage behaviors rather than focusing on MOOC platforms' nature. Based on this foundation, making appropriate changes to both general and specific fair use system provisions is both an era requirement and guidance from the favorable opportunity of the third copyright law amendment.

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Author Contributions:
Jiang Nan: Responsible for overall paper structure and partial content writing. Wang Yihuai: Responsible for case and material collection and partial content writing.

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