

Research on the Copyright Content Filtering Obligation of Internet Service Providers

Feihong Wang

China Jiliang University, Hangzhou, China
wang17335566772@163.com

Abstract: *In recent years, with the vigorous development of the digital content industry, the problem of Internet copyright infringement has become more and more serious. The development of digital technology has greatly reduced the cost of reproduction and dissemination of works, and the problem of copyright infringement on the Internet has become more and more serious. Under this trend, the network copyright protection system, which has been centered on the "safe haven rule" in the past, has become powerless. Fully reflecting the interests of the new digital environment, the principle of technological neutrality upheld by the "safe haven rule" is no longer sustainable. It exposes the disadvantage that the interests of all parties in the network copyright infringement dispute are difficult to balance. The reason is that the rights and obligations of the "safe harbor rule" are too biased to protect the interests of network service providers. This is actually a departure from the connotation of the principle of technological neutrality. The neutrality of technology itself is not equal to the neutrality of technical behavior. Under the condition that the Internet industry is mature and has the technology to filter copyrighted content, Internet service providers have already had the realistic conditions to bear a higher duty of care. And to increase the duty of care of Internet service providers is not a discriminatory provision, but a necessary means to regulate Internet copyright infringement. The development of copyright content filtering technology provides new ways and ideas for the regulation and prevention of copyright infringement on the Internet.*

Keywords: *Network service providers; Copyright; Safe haven rules; Filtering obligation*

1. Introduction

Nowadays, with the rapid development of network technology, new technologies such as big data, cloud computing and machine learning have emerged, and technologies such as fingerprint technology, key frame identification and image content analysis for content filtering have also been mined, and many network service providers have the ability to take filtering measures. However, the infringing content in the network service platform is still flooding, and the network service providers only do not use filtering technology to crack down on illegal acts, but also seek their own havens the "notice-delete" rule, so as to avoid the risk of infringement, and benefit a lot from the infringing content on the platform. At the beginning of the development of the information service industry, due the policy considerations of the development of the industry and technology, there were no excessive requirements on the necessary technical measures of the network service providers; However, when the copyright problem is prominent and Internet service providers also have the corresponding economic technical capabilities, higher requirements should be given to technical measures and Internet service providers should be subject to filtering obligations.

2. Dilemma of copyright duty of care of Internet service providers

2.1 There are limitations in the application of the existing safe harbor rules

Established in the 1990s, the safe haven principle is a compromise in the context of The Times and technology. Due to the limited technical level and the start of the development of the protection of information service industry, legislators have reduced the duty of care standards, fault requirements and technical measures standards of network service providers when formulating laws. In the face of the increasingly intensified infringement methods, the principle is in the present In terms of resolving disputes and balancing the interests of all parties, it is difficult to find one way or the other. The safe harbor principle has little effect on the governance of copyright infringement. On the one hand, the

explosion of infringement notices makes Internet service providers overwhelmed^[1]; On the other hand, the way the network service provider deals with it after the event is not effective either. Nor can the safe harbor rule effectively restrict the occurrence of infringement through the "notice-delete" rule. For example, the infringement link during the Olympic Games, the offline rate of individual key commercial websites is less than 40% in 24 hours, and sports events are highly timely works in the live state, even if the measures to disconnect the link or cut the content are taken immediately after the detection, it will cause huge losses in interests because of the time difference. In 2013, the China Online Video Anti-Piracy Alliance issued a joint Anti-piracy Action Declaration and sued the court at the same time, claiming a total of 300 million yuan from Baidu and Qvod for stealing video links. Baidu said that after receiving reports from users, its internal team dedicated to dealing with infringing content in a timely manner to deal with infringing content. The statement can confirm that Baidu is actively practicing the "notice-delete" rule, but piracy on Baidu's network is still very rampant, which means that the current technical measures and countermeasures taken by network service providers have been unable to effectively solve the current situation of frequent piracy and infringement.

At the same time, the legislator's legislative incline to copyright owners and the low cost of violating the law make the principle of safe haven abused unreasonably. According to the Regulations on the Protection of the Right of Information Network Transmission, copyright owners need to bear compensation liability only when they cause losses caused by improper notification to service objects, while network service providers need to bear joint and several liabilities as long as they do not take measures in time, which is obviously unfair liability distribution. In addition, copyright agencies and law firms now almost always issue notices on their behalf, charging according to the number of notices^[2]. It can be seen that the effectiveness and applicability of the safe harbor principle are gradually decreasing, and new effective measures are urgently needed to establish a new interest balance pattern.

2.2 Internet copyright infringement is becoming increasingly serious

With the continuous development of Internet technology, the number of Internet users is on the rise rapidly, and the current model of user-created content makes the regional boundary between consumers and producers gradually blurred. Creation has also become easier due to the development of platform technology, which poses a huge challenge to determine whether it is infringement or fair use. Because of the non-professionalism of the network user group and the neutral and passive attitude of the network service provider, the infringement has become more and more serious. The reposting of infringing content by countless people in just a few minutes or even tens of seconds can spread the infringing content all over the Internet, causing indelible and serious damage. In addition to the increasing number of Internet users leading to more serious infringement of Internet copyright, the intentional appeasement and indulgence of Internet service providers are also important factors. After more than ten years of application practice in our country, the safe harbor principle not only reduces the duty of care of Internet service providers, but also reduces their enthusiasm to prevent third-party infringement^[3]. In judicial practice, network service providers deny their "knowing" of the infringement on the grounds that they cannot make accurate judgments, which makes the platform intentionally indulge the infringement tendency to develop normally^[4]. First of all, the judicial authorities cannot accurately determine that the network service provider "knows" or "should know" the status of the infringing content on its platform, and the platform does not need to bear any legal responsibility if the copyright owner has not notified it, so the network service provider will not take the initiative to take protective measures to prevent infringement. In addition, the safe haven principle does not accurately stipulate the time for the platform to remove infringing content in a timely manner, so it is common for Internet service providers to use the gray area to gain benefits for themselves. Moreover, in order to maximize their own interests, Internet service providers are likely to attract more potential traffic without stopping infringing users from sharing pirated works, and Internet service providers, as the most capable and supervising and restraining role, are comfortable "hiding" in the harbor, allowing copyright owners' various interests to be arbitrarily infringed by infringers.

3. Feasibility of introducing copyright content filtering obligations of Internet service providers

3.1 Our country has the technical ability to take filtering measures

With modern technology as the background, many network service providers outside the region

have begun to identify the filtering measures of users uploading infringing content, which is also a practical and feasible technical means that can be considered to be introduced. In terms of domestic, technology is also in a period of rapid development, and many network service providers have the technical strength to use filtering means. As early as a few years ago, Guanyong Technology has developed a set of "FBI-filtering" original copyright content filtering system, which is used to conduct real-time review of the content uploaded by users, and on this basis to achieve early warning and filtering of copyright infringement^[5]; Tencent has a "video gene comparison technology", the principle is to use accurate image comparison algorithms to identify similar content^[6]. The Answer to Several Questions of the Beijing Higher People's Court on the trial of E-commerce Infringement of Intellectual Property Disputes also mentioned that right holders or e-commerce platform operators who can prevent and stop infringement at a lower cost should take the initiative and timely take necessary measures, otherwise they should bear the adverse consequences.

3.2 China has the legal basis and practical needs of filtering obligations

At present, both in the current legislation and in practice, the filtering obligations of Internet service providers are stipulated. In China, some legal provisions contain "filtering obligations" for service providers. In 2020, the Supreme People's Court issued the Guiding Opinions on the Trial of Civil Cases Involving Intellectual Property Rights of E-commerce Platforms (the following Guiding Opinions), which stipulates that if there is no effective technical means to filter and intercept products such as "high imitation" and "fake", it is deemed to be "should know".

In addition, Article 10, paragraph 3, of the Guiding Opinions will "adopt effective technical measures to... The filtering methods adopted by the relevant platforms, such as "filtering and blocking of commodity links", are juxtaposed with the "other duties of care" in paragraph 4, which means that they consider the filtering methods as part of the "duty of care". Article 4 of the Notice on Regulating the Copyright Order of Web Disk Services requires that Internet service providers must take effective technical means to automatically intercept and delete infringing works. Later, in the "Notice on Strengthening the Copyright Management of Online Literary Works", there was a similar provision, which is called "copyright protection". In judicial practice, there are also some cases in which providers are forced by the court to use filtering measures, which reflects the needs of practice. For example, in the Shanghai emotional v. Quantudou case, the court found that the Quantudou website provider had the ability to carry out "prior technical filtering" and should carry out simple keyword blocking to prevent the occurrence of infringing content, but it did not deal with this accordingly, and was therefore found to have failed to fulfill a reasonable duty of care.

To sum up, in the early development process of the Internet and Internet service providers, the state shifted more of the regulatory responsibility for infringements to the right holders in order to speed up the development of related industries. But Internet service providers have grown into a powerful group in recent years, and technological innovations have made filtering feasible. Therefore, it is no longer appropriate to weaken the relevant regulatory responsibilities of ISPs in order to promote their development, and they can no longer be left to work passively under "safe haven" rules.

4. The necessity of introducing copyright content filtering obligations of Internet service providers

4.1 The introduction of copyright filtering obligations helps to protect the operations of Internet service providers

In the network environment, Internet service providers can greatly save operating costs and achieve economies of scale by filtering network copyright content in advance. At the same time, the larger the scale of web filtering, the lower the marginal cost. In addition to the cost required for the implementation of the filtering mechanism, the artificial assistance cost under the filtering mechanism will be greatly reduced compared with the original, and the original "artificial main" will be "artificial auxiliary", so as to effectively prevent the excessive growth of labor costs.

Moreover, according to the relevant regulations, if the Internet service provider fails to take corresponding action, then it needs to be held jointly liable. Therefore, when the infringement phenomenon becomes more and more serious, the subsequent processing costs of Internet service providers will increase in a proportional way. In this case, by introducing filtering obligations, the

number of infringement notices can be reduced from the root cause, thus directly reducing the processing costs. On the other hand, when Internet service providers can profit from the use and dissemination of infringing works by others, they will not take excessive precautions in overly strict ways. That is to say, even if the copyright content filtering technology is adopted, its filtering standards will not be arbitrarily set, so as to not adversely affect the normal dissemination and utilization of works, and thus not hinder their own interests.

Therefore, the introduction of copyright content filtering obligations in Internet service providers will not increase additional operating costs, but also fundamentally reduce the occurrence of infringement, thereby saving subsequent processing costs. And because the filtering behavior has almost no adverse impact on the normal dissemination and use of the work, the value of the work can also be effectively guaranteed.

4.2 The introduction of copyright filtering obligations helps protect the interests of copyright owners

The introduction of Article 17 of the European Digital Single Market Copyright Directive is based on the tradition of "natural law" in the civil law system, and its purpose is more to protect the rights and interests of copyright owners and improve the disadvantageous position of copyright owners^[7]. In the distribution mode of copyright responsibility with the duty of care as the core, the weak copyright owners bear the main protection responsibility. As a weak subject of rights, the probability of copyright owners taking the initiative to find the infringement is very low under normal circumstances, and they often realize that their copyright has been infringed only occasionally. Therefore, the protection of copyright on the network content sharing platform is very fragile, and it is obvious that the active protection of copyright by the "safe haven" rule is almost negligible, and the loopholes in the system leave opportunities for infringement^[8].

In addition, Internet service providers use the videos uploaded by users to gain more attention and clicks, and rely on the number of these resources to attract advertising and user payment mechanisms to gain profits, but copyright owners will suffer irreparable losses. From this point of view, copyright owners are in a relatively weak position compared with Internet service providers in terms of copyright income, which is obviously not in line with the principle of balance of interests upheld by the copyright system. In an age when digital works can be easily and instantaneously copied and distributed around the world, without effective protection mechanisms to prevent large-scale infringement, copyright owners will inevitably hesitate to publish their works online. Although intellectual information has the attribute of public goods, in order to stimulate the creative enthusiasm of social work, policymakers set it as private property with a time limit through legislation, and improve the scarcity of copyright works through exclusive and competitive means, so that it has a high social value. However, since piracy and infringement greatly destroy the market potential and scarcity value of copyright owners' works, copyright owners need to ensure that the value of their works is not diluted by taking measures to protect the privacy of their intellectual property rights. If copyright owners weaken or even lose their speed and ability to create excellent works because of the serious infringement situation or the excessive responsibility of safeguarding their rights, it will have a major impact on the culture of the whole society. In addition, requiring Internet service providers to actively filter the content of online works can not only restrain the increasingly serious situation of copyright infringement, but also solve the platform's condoning of infringement to a certain extent. This way of responsibility distribution is also more in line with the principle of balance of interests between the interests obtained and the responsibilities assumed.

5. Path construction of copyright filtering obligations of Internet service providers

5.1 Develop a unified filtration standard

In order to avoid the difference of filtering effect caused by different filtering technologies of various Internet service providers, a set of unified copyright filtering technology standards can be developed for the filtering technology of copyright content. This standard is the norm and basis that network service providers need to generally follow, and is the specific implementation plan after the revision of laws and regulations. It stipulates that Internet service providers should implement standards, and relevant national regulatory authorities should regularly check the implementation of copyright content filtering. The advantage of developing a unified national standard is that it can not

only unify the filtering effect, but also reduce the information security risks caused by the algorithm, but also make it convenient for the state and relevant industry authorities to supervise.

5.2 The State Intellectual Property Office takes the lead in establishing a legitimate data database

In the construction of copyright content filtering mechanism, the academic community generally agrees that the establishment of legitimate data database is important for copyright filtering. Copyright owners add legitimate works to the database, and Internet service providers filter them against legitimate works. However, it is impractical for network service providers to build data databases one by one. In order to avoid bringing huge economic pressure to operators in the construction and maintenance process, it is relatively a better solution to build a unified legitimate data database. This paper believes that under the leadership of the State Intellectual Property Office, the National network copyright monitoring Center should be established as soon as possible to ensure the normal dissemination and use of network copyright. Copyright owners only need to apply to the regulatory authorities to obtain the corresponding rights information, which can not only prevent copyright owners from repeatedly submitting on multiple platforms, but also avoid differences in judgment among staff of various platforms. In addition, when submitting a copyright filtering request, the copyright owner should also submit the authorized account information to ensure that the authorized content can be transmitted properly. After receiving the application, the government's regulatory agency sends the screening request to the various websites, which are then screened by the respective ISPs' systems.

5.3 Establish an internal complaint handling mechanism

If algorithms take the lead in filtering, there is a risk of rigid over-filtering. In view of this situation, this paper proposes to build an "algorithm + manual" internal appeal resolution mechanism. In the process of algorithm-led filtering, there are some problems that are difficult to be solved by comparing techniques such as flexible discretion. Therefore, in order to make the filtering mechanism more flexible and reasonable, it is a more beneficial supplement to add human auxiliary judgment in addition to algorithm filtering. The specific resolution mechanism for internal complaints should be set as follows: After the filtering system handles the illegal content, the uploader of the illegal content should be notified in a timely manner by sending an internal letter or email. If the uploader has been authorized or determines that the uploaded content meets the filtering criteria for fair use, he or she can file a complaint. After the complaint is submitted, it is manually reviewed and processed, and if it is indeed deleted by mistake, it should be restored immediately. In order to make this complaint resolution mechanism easier and more efficient, ISPs should disclose in a significant way the avenues and process of complaint processing and the time frame.

6. Conclusion

With the rapid development of the Internet, the infringing content in the network platform presents the characteristics of large quantity, high repetition rate and fast transmission speed. Some network platforms abuse the safe harbor rules, condone users to upload pirated content to attract users, and indirectly profit from it. Neither the existing "notice-remove" nor complementary red flag rules can effectively solve the current chaos of copyright infringement. Mature copyright content filtering technology provides a new solution for copyright governance in the era of digital economy. In view of the practical needs and rich practical experience, it is necessary to give Internet service providers copyright content filtering obligations, so that the interest relationship between Internet service providers and copyright owners back to balance.

References

- [1] He Lianhong. *On Notification Rules of Network Copyright Infringement in the Era of Algorithms* [J]. *Law and Business Research*, 2021(4).
- [2] Wan Yong. *Notice of Copyright Law in the era of Artificial Intelligence - Removal System* [J]. *Chinese and Foreign Law*, 2019(5).
- [3] Cui Guobin. *On the Copyright Content Filtering obligations of Internet Service Providers* [J]. *Legal Studies*, 2013 (4).
- [4] Zhu Kaixin. *From "Notification Removal Rule" to "Notification blocking Rule"* [J]. *Electronic Intellectual Property*, 2020(5).

[5] Wu Guanyong. *Helping Copyright New Ecology with Science and Technology* [J]. *China Press and Publication Radio*, 2015(7).

[6] Tian Xiaojun, Guo Yudi. *Research on copyright governance of short video platforms: from the perspective of setting copyright filtering obligations of platforms* [J]. *Journal of Publishing and Distribution Research*, 2019(3).

[7] Zeng Jun. *On the implications of Article 17 of the EU Copyright Reform Directive on the responsibility of Chinese online content sharing platforms* [J]. *German Studies*, 2020(3).

[8] Si Xiao, Fan Luqiong. *Legal regulation on abuse of "notice-delete" rule in intellectual property Field* [J]. *Electronic Intellectual Property*, 2015(1).