

# Analysis of the Characterization and Improvement of the Safe Harbor Rule in the Electronic Commerce Law

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**Abstract:** This article focuses on the safe harbor rules in the E-Commerce Law and discusses in depth its characterization and improvement strategy. Under the background of the booming development of Internet economy, the problem of intellectual property infringement is highlighted, and the clear definition of the safe harbor rule is of key significance in promoting the orderly development of Internet economy according to law. Through a comprehensive analysis of the origin, legal basis, qualitative analysis, implementation status and causes of the safe harbor rule, this paper puts forward a series of improvement suggestions, aiming to provide solid legal support for the protection of intellectual property rights in the field of e-commerce.

**Keywords:** The Safe Harbor Rule, The Electronic Commerce Law, Coordinated Protection.

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## 1. Introduction

With the rapid progress of information technology, the Internet economy has become an important driver of global economic growth. China stands out in this wave, becoming the world's largest online sales market. According to the National Bureau of Statistics, China's annual online retail sales reached 18 trillion yuan in 2024, a year-on-year increase of 17%, showing a strong momentum of development. However, behind this prosperous scene, the problem of intellectual property infringement is like a haze, bringing serious challenges to the healthy development of the Internet economy. The data released by the procuratorial authorities show that from January to November 2024, the prosecution of network crimes of making and selling counterfeit and shoddy goods increased by 90% year-on-year, which not only reflects the enhancement of citizens' awareness of intellectual property rights, but also highlights the increasingly rampant infringement phenomenon, especially the ambiguities of the platform's auditing and notification obligations, which has seriously constrained the development of the Internet economy in accordance with the law. In this context, it is particularly urgent to study the safe harbor rules in the E-Commerce Law, clarify their characterization and improve the relevant provisions.

## 2. Organization of the Text

The safe harbor rule first appeared in the Digital Millennium Copyright Act (DMCA) of the United States in 1998. The Act was designed to address the new challenges of copyright protection brought about by the development of digital technology and to harmonize the interests between ISPs and copyright owners. At that time, the popularization of the Internet led to an unprecedented scale and speed of copyright infringement, which made it difficult to adapt to the traditional copyright protection model. The DMCA provided a certain degree of liability exemption for ISPs by creating the safe harbor rule, encouraging them to actively participate in the dissemination and management of Internet content, and at the same time providing an effective way for copyright owners to defend their rights.

China introduced the safe harbor rule in 2006, which was first stipulated in the Regulations on the Protection of the Right to Information Network Dissemination. This initiative marked the beginning of China's attention to the protection of intellectual property rights in the online environment and the construction of its own legal system based on advanced international experience. The Regulation clearly stipulates that copyright right holders, after discovering that their rights have been infringed upon, may send infringement notices to online platforms, which shall take necessary measures such as deletion and disconnection. This regulation laid the foundation for online copyright protection in China and initially established an interactive mechanism between copyright holders and online platforms. In 2009, the Tort Liability Law was promulgated and implemented, and the scope of application of the safe harbor rule was further expanded. It is no longer limited to the field of copyright, but covers all online infringement disputes. This expansion adapts to the trend of diversification and complexity of network infringement, and provides a unified legal basis for the handling of all kinds of network infringement cases. The provisions of the Tort Liability Law have further consolidated the position of the safe harbor rule in China's legal system, becoming one of the important rules for the determination of network infringement liability.

In 2018, the introduction of the E-Commerce Law provided more detailed and specific regulations on the safe harbor rules. This law addresses the characteristics of the e-commerce sector and clearly defines the rights and obligations of right holders, platform operators and operators within the platform. Among other things, the provisions on notification by right holders, adoption of necessary measures by platforms, and the obligations of sub-notification and counter-notification have further improved the operation mechanism of the safe harbor rules. For example, the E-Commerce Law stipulates that the platform operator shall take necessary measures in a timely manner upon receipt of the notification and forward the notification to the platform operator; at the same time, the platform operator shall have the right to file a counter-notification upon receipt of the forwarding notification to safeguard its own legitimate rights and interests. In 2020, the Civil Code was enacted, integrating and improving the safe

harbor rules in the Tort Liability Part. The Civil Code absorbed the experience of previous relevant laws and regulations and provided for more systematic and comprehensive provisions on cyber tort liability. It further clarifies the way of assuming responsibility of network service providers under different circumstances, providing a more solid legal basis for the application of the safe harbor rule. For example, in determining whether an ISP "knew or should have known" of an online infringement, the Civil Code provides for a series of factors to be considered, including whether the ISP has proactively examined the infringement, and whether it has taken reasonable precautionary measures.

From its origin to its gradual development and perfection, the safe harbor rule has gone through a process of continuous adaptation to national conditions and international integration in China, and has become an indispensable part of China's legal system for intellectual property protection.

### **3. Jurisprudential Analysis of the Safe Harbor Rule**

#### **3.1. Balance of Interests Considerations**

In an e-commerce environment, multiple subjects of interest are involved, including intellectual property rights holders, online platform operators, on-platform operators and consumers. The design of the safe harbor rules aims to achieve a balance of interests among these subjects. On the one hand, by granting intellectual property right holders the right to notification, it enables them to detect and stop infringement in time and protect their intellectual property rights and interests. The right holders can send infringement notices to the platform and request the platform to take measures, thus effectively curbing the spread of infringing behavior. On the other hand, a certain amount of space for liability exemption is provided for network platform operators to encourage them to actively participate in network economic activities and promote the dissemination and sharing of information. After receiving the notification, the platform only needs to handle the matter in accordance with the regulations without excessive liability for infringement, which helps to reduce the operational risk of the platform and improve its operational efficiency. For operators within the platform, the safe harbor rule also indirectly protects their legitimate business rights and prevents them from suffering losses due to unfounded infringement allegations. Consumers are able to obtain more and better quality goods and services in an organized and legitimate e-commerce environment. For example, on an e-commerce platform with good intellectual property protection, consumers can purchase genuine goods with confidence and reduce the risk of purchasing counterfeit or substandard products.

#### **3.2. Rationalization of the Allocation of Responsibilities**

The safe harbor rule embodies the principle of reasonable allocation of responsibility. When network infringement occurs, the responsibility is assigned to the subject most capable of controlling and preventing the infringement. As a link between intellectual property rights holders and operators within the platform, the network platform has certain management and supervision capabilities over the business activities within the platform. It can take initial precautions against infringement by formulating rules, reviewing information, and so on. However, the platform's management

ability is also limited, and it cannot be required to conduct prior review and comprehensive monitoring of all infringing behaviors. Therefore, the safe harbor rule stipulates that the platform, upon receiving notice from the right holder, assumes the responsibility to take necessary measures in a timely manner, such as deleting the infringing links and blocking the infringing information. As for the operators within the platform, if they have committed infringing acts, they shall bear the corresponding infringing liability. This allocation of responsibility not only takes into account the actual ability of the platform, but also ensures the ultimate implementation of the responsibility for infringement and avoids the unreasonable transfer of responsibility. For example, in some cases involving trademark infringement, if the operator within the platform is unauthorized to use another person's trademark for the sale of goods, and the platform promptly takes down the link to the relevant goods after receiving the notification from the trademark owner, the operator within the platform is required to bear the liability for its infringement.

#### **3.3. Promoting Innovation and Development**

At the macro level, the safe harbor rule helps to promote the innovation and development of the Internet economy. In the Internet era, information spreads rapidly and innovations are easily copied and disseminated. If online platforms are too cautious about content dissemination for fear of excessive tort liability, it will inhibit the free flow of information and the enthusiasm for innovation. The safe harbor rule provides a relatively stable legal environment for platforms to conduct business with a certain degree of confidence, encouraging the emergence of more innovative business models and services. For example, many emerging Internet enterprises rely on the openness and inclusiveness of platforms in the early stages of their development, and without the protection of the Safe Harbor Rule, these enterprises may not dare to innovate boldly for fear of the risk of infringement. Meanwhile, for intellectual property rights holders, although the safe harbor rule may, to a certain extent, make the process of defending their rights face some challenges, in the long run, a healthy and active Internet economic environment is conducive to the generation of more innovations, and brings more business opportunities and benefits in return for rights holders.

### **4. Conclusion**

With the continuous development of the Internet economy, the business models of e-commerce platforms have become increasingly complex and diverse, and the scope of responsibility of platforms in the safe harbour rules needs to be further clarified and refined. Judicial interpretations should clearly stipulate the specific liability of the platform under different circumstances, such as under what circumstances the platform should bear joint and several liability, supplementary liability or no liability. For example, if the platform is aware of the existence of infringement and intentionally leaves it unattended, it should be clearly stipulated that the platform bears joint and several liability; if the platform fails to take necessary measures in a timely manner after being notified of the infringement but the infringement does not ultimately result in serious consequences, it should be stipulated that the platform bears the corresponding supplemental liability. By clarifying the scope of responsibility, the platform can clearly know the boundaries of its own behavior and avoid the operation risk caused by unclear responsibility.

The judicial interpretation should specify in detail the specific procedures and requirements for notification and counter-notification. For the notice, it should specify its effective form, the content elements to be included (such as specific evidence of infringement, the identity of the right holder, links to infringing goods or services, etc.), as well as the mode of service of the notice and time limitations. For the counter-notice, it should also specify its format, content requirements (such as the respondent's elaboration of specific reasons for non-infringement, provision of relevant evidence, etc.), submission time, and the platform's review criteria for counter-notices and processing procedures. For example, it is stipulated that the notice must be submitted in written form (including electronic documents) and should contain preliminary evidence that can clearly prove the fact of infringement, such as the comparison of pictures of infringing goods, trademark or patent certificates, etc. the counter-notice should be submitted within a certain reasonable period of time after the receipt of the transfer of the notice, and the platform should review the counter-notice within a specified period of time after receiving the counter-notice and decide whether or not to reinstate the respondent's business based on the results of the review. This can ensure the standardization and fairness of the notification and counter-notification procedures and improve the efficiency of dispute resolution.

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