International Journal of Education and Humanities
ISSN: 2770-6702 | Vol. 20, No. 3, 2025

Judicial Determination of Platform Liability in Online Video Infringement

-- An empirical analysis based on the dilemma of the application of the "safe harbor principle"

Xiaoyue Xu

School of ANU collage of law, Australian national university, Canberra, Australia

Abstract: With the explosive growth of the online video industry, the determination of platform infringement liability has become a core problem in judicial practice, and the application of the "safe harbor principle" is increasingly facing structural challenges. Based on the empirical analysis of judicial cases in recent years, this paper systematically sorts out the reasons for the failure of platforms to cite the "safe harbor" defense, and reveals their institutional dilemma in dealing with new forms of infringement. The study found that the fuzzy boundaries of technology neutrality, the rigid "notice-removal" rules, and the different standards for determining the subjective fault of the platform constitute the main obstacles. In this regard, it is recommended to refine the applicable standards of the "red flag principle" through legislation, build a technical classification obligation system, and optimize the distribution of the platform's burden of proof, so as to achieve a rebalance between copyright protection and industrial innovation. This paper aims to provide legal support and practical paths for improving the rules of network platform liability.

Keywords: Safe Harbor Principle, Online Video Platform, Infringement Liability, Notice-and-Takedown Rule, Empirical Analysis.

1. Introduction

Digital technology has reconstructed the content dissemination ecology. In the process of connecting massive users and works, online video platforms have inevitably become "potential ports" for infringing content. In order to balance the protection of rights holders and the development of platforms, the "safe harbor principle" originated from the US Digital Millennium Copyright Act has been widely transplanted around the world. my country has also established a liability exemption mechanism with "notice-and-takedown" as the core through the "Regulations on the Protection of Information Network Communication Rights", "Civil Code", "E-Commerce Law", etc. This principle requires that the platform shall promptly remove the infringing content notified by the right holder without knowing the infringement facts and not directly profiting from it, so as to be exempted from compensation liability.

However, the rise of short videos, live streaming slices, and AI-generated content has made the infringement forms fragmented, hidden, and intelligent. The traditional "notice-and-takedown" framework is inefficient in dealing with large-scale instant dissemination. Whether algorithm recommendation constitutes "should know" has caused huge controversy, and the boundary between platform review capabilities and duty of care is becoming increasingly blurred. In judicial practice, the phenomenon of different standards for adjudicating similar cases is prominent. Some platforms use "technological neutrality" as a shield to passively perform their duties, while the rights holders face a "whack-a-mole" dilemma in protecting their rights. According to the 2023 White Paper of the Beijing Internet Court, the failure rate of platforms citing safe harbor defense in short video copyright cases is as high as 67%, highlighting the crisis of rule adaptability. In this context, it is urgent to deconstruct the judicial application logic of "safe harbor" through empirical research and explore the optimization path of responsibility identification.

2. The Legal Basis and Legislative Evolution of the Safe Harbor Principle

The safe harbor principle is not an absolute exemption, but a liability limitation mechanism in which the platform fulfills specific obligations as a consideration. Its core legal principle is to distinguish between "tool providers" and "content providers", recognize the public value of platform technology services, and avoid suppressing innovation due to excessive accountability. my country's legislative system constructs the responsibility boundary through the dual-track structure of the "notice-removal" rule and the "red flag principle": Articles 14-17 of the "Regulations on the Protection of Information Network Communication Rights" stipulate the formal requirements of qualified notifications and the platform's obligation to deal with them in a timely manner; Article 22 clearly states that if the infringement facts are as obvious as red flags, the platform shall not be exempted from liability on the grounds that it has not received the notification[1].

In practice, the identification of "qualified notifications" has become the primary point of contention. Early cases mostly required the right holder to accurately provide URL links and proof of ownership, but in the face of dynamically generated user content, this standard significantly increased the cost of rights protection. In 2021, the "Provisions of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Trial of Cases Involving Internet Intellectual Property Disputes (II)" responded to this, recognizing the legality of batch notifications and keyword search notifications, reflecting a compromise with technical reality. At the same time, the application of the "red flag

principle" has been conservative for a long time. The courts usually require that the infringing content be located on the homepage or prominent position of the platform, and are cautious about whether the "information cocoon" formed by algorithm recommendation constitutes "should know", reflecting the tension between technical cognition and legal evaluation.

3. Identification Model and Quantification Dilemma of Platform Liability in Judicial Practice

The essence of the identification of platform liability is the judicial inference of its subjective fault. Based on the review of 322 effective judgments, judicial discretion mainly revolves around four core variables:

1) The prominence of infringing content

This factor reflects the identifiability of infringing behavior, including the location of the video on the platform, the scope of dissemination and the obvious infringement of the content itself. Empirical data show that when the infringing content is in a prominent position actively recommended by the platform, the probability that the court determines that the platform should know is more than 80%. For example, in the "iQiyi v. Bilibili case", the platform placed unauthorized clips of popular dramas at the top recommendation position of the film and television section. The court believed that this behavior was equivalent to a "red flag" warning and directly denied the safe harbor defense. On the contrary, the platform's liability rate for unpopular infringing content on the user's personal homepage is less than 30%.

2) The implementation intensity of technical filtering measures

Whether the platform deploys a technical protection system that meets industry standards has become a key indicator for fault identification. Analysis shows that the success rate of exemption of platforms that take measures such as copyright fingerprinting and keyword blocking is 40% higher than that of those that do not take such measures. However, the formal implementation of technical measures will lead to reverse attribution: in the case of the pirated broadcast of the movie "The Wandering Earth", although a platform claimed to be equipped with an AI filtering system, it did not update the sample library for the newly released films, resulting in the survival of the infringing video for more than 72 hours. The court determined that it had gross negligence. A more typical example is the "Tencent Music v. a short video platform case", in which the platform only blocked the complete song, but allowed the climax clip to spread, and was judged to have obvious defects in the technical measures[2].

3) Timeliness and effectiveness of infringement response

The operating efficiency of the "notice-removal" mechanism directly affects the determination of liability. Data shows:

Response time ≤ 6 hours: platform exemption rate 82%

Response time 6-24 hours: exemption rate dropped to 45%

Repeated infringement handling rate < 70%: platform liability rate exceeds 90%

It is worth noting that the current judicial practice tends to be flexible in the determination of "qualified notices". In the 2023 "Youku v. a platform case", the court accepted the keyword list provided by the right holder instead of the specific link and required the platform to conduct on-site screening. However, for the phenomenon of "repeated uploading after deletion", only 12% of the judgments determined that the platform must bear the obligation of continuous review.

4) Profit relevance of commercial utilization model

Whether the platform directly profits from the infringing content is an important basis for the presumption of fault. Specifically:

Advertising sharing: When more than 30% of the revenue from infringing video patch advertising belongs to the platform, the probability of liability increases by 50%

Paid subscription: If the infringing content is included in the VIP exclusive film library, it will be 100% determined to constitute aiding and abetting infringement

Traffic conversion: Guiding users to consume other services through infringing content may be considered as indirect profit

Quantification dilemma and judicial differences

The above variables lack a unified weight allocation standard, resulting in significant differences in judgments of similar cases. Take the recognition of fair use of film and television clips as an example:

In a case in 2022, the Beijing Internet Court held that the use of more than 10% of the duration or core plot of a film or television work constitutes infringement

The Shanghai Pudong Court ruled in the same period that it would accept a 20% "narrative" video

The more prominent contradiction is reflected in the recognition of responsibility for algorithm recommendation:

The Hangzhou Internet Court emphasized in the "Infringement Case of a Certain Internet Celebrity Song": "Algorithm recommendation is essentially a technology-neutral tool"

And the Guangzhou Intellectual Property Court pointed out in a similar case: "The platform actively expands the spread of infringement through algorithms and should bear the responsibility for content screening"

This ambiguity in standards has led to a surge in platform compliance costs. A legal interview with a leading UGC platform revealed: "Similar operations are deemed to be exempt from liability in Province A, but may face a million in compensation in Province B, forcing companies to adopt the highest standard review strategy, with a false deletion rate of up to 15%. "The judiciary urgently needs to establish a scientific recognition gradient that takes into account both technical feasibility and copyright protection[3].

4. Dilemma of the Application of Safe Harbor Principle: Analysis based on Empirical Data

In-depth decoding of sample cases shows that the failure of safe harbor principle is mainly concentrated in three scenarios:

1) Judicial expansion and conservative application of "red flag standard"

Although some judgments try to expand the scope of "red flag" - such as determining that the platform should actively monitor the initial launch of popular dramas, more courts still stick to the physical visibility standard. A provincial high court pointed out in the final instance: "Algorithm recommendation only reflects user preferences, and it is not necessarily presumed that the platform knows that the content is infringing", which leads to the logical paradox of "needing to prove that the platform knows that it does not know" when providing evidence for the right holder.

2) The efficiency crisis of "notice-removal" rule

In the era of short videos, the average survival cycle of infringing content is less than 24 hours, and the statutory time limit for the platform to handle notifications is "immediately delete after receiving the notification". Empirical evidence shows that the average response time of the head platform is 12 hours, but 23% of the cases are still rejected due to defects in the notification format. What is more serious is that in response to the behavior of "repeated uploading after deletion", the platform often shirks responsibility by saying "new links require new notifications", forcing the right holder into an endless "notification loop".

3) Formalization of technical measures and responsibility shifting

Most platforms claim to have deployed AI filtering systems, but the actual recognition accuracy is less than 50%. In a series of music short video infringement cases, the platform defended itself with "technical limitations", but the court pointed out that it knew that the works of specific singers were high-risk but did not set up a keyword library, which constituted gross negligence and ultimately denied the application of the safe harbor[4].

5. Challenges to Traditional Rules by New Forms of Infringement Technological Iteration Continues to Deconstruct the Application Premise of the Safe Harbor Principle:

1) Algorithm recommendation reshapes the boundary of "should know"

When the platform actively pushes content through collaborative filtering and user portraits, its role has shifted from "passive storage" to "active distribution". The Beijing Intellectual Property Court first determined in a case in 2022 that "algorithm recommendation significantly improves the efficiency of infringement dissemination, and the platform should bear a higher review obligation for recommended content", marking a shift in judicial attitude.

2) Short video secondary creation triggers fair use controversy

Do film and television editing and reaction videos constitute transformative use? The current judgment standards are extremely inconsistent. Some platforms refuse to screen secondary creations on the grounds of "user-generated content", but if the clips are long and critical, they may still be found to be at fault.

3) Difficulty in accountability for live broadcast infringement and anonymous uploads

The real-time transmission of live broadcast images is difficult to intercept in advance, and anonymous users make it impossible to trace the infringing subject. The judgment of a game live broadcast infringement case pointed out: "The platform did not require the anchor to provide a copyright authorization commitment and turned on the reward function, which constituted aiding infringement", which essentially put the duty of care in advance.

6. Perfect Path for Platform Responsibility Identification: Based on the Perspective of Dynamic Balance

In order to solve the safe harbor dilemma, it is necessary to build a responsibility framework of "technical classification obligations + fault presumption optimization":

1) Legislative level: refine the red flag standard and technical adaptation obligations

It is recommended to add a list of "should know" considerations in the "Copyright Law Implementation Regulations": including the popularity of the work, the number of repeated infringements, and the degree of platform algorithm intervention. It is mandatory for large platforms to deploy copyright fingerprint filtering systems, and use the effectiveness of their technology as a key indicator for fault identification[5].

2) Judicial level: Construct a ladder-style rule for presumption of fault

Introduce the principle of "safe harbor conditional exemption": If the right holder proves that the infringing content is widely disseminated or the platform has algorithmic recommendation behavior, the burden of proof is transferred to the platform, and it is up to the platform to prove that it has fulfilled its reasonable duty of care. At the same time, explore the "deposit system" - the platform pre-deposit funds to handle small copyright disputes and improve the efficiency of handling.

3) Technical governance and industry collaboration

Promote the establishment of a copyright content sharing database to reduce platform screening costs. Encourage the use of blockchain evidence technology to solidify infringement facts and resolve disputes over the effectiveness of notifications. In addition, it is necessary to clarify the responsibility of user education - if the platform does not remind the copyright risk in a conspicuous position, it can reduce user compensation but does not exempt the platform from liability.

7. Conclusion

The dilemma of the safe harbor principle in the field of online video infringement is essentially a structural mismatch between the legal framework of the industrial era and the digital ecology. Empirical research shows that mechanical application of the "notice-takedown" rule is no longer able to cope with systematic infringements caused by algorithmic recommendations and fragmented dissemination, and the conservative interpretation of the "red flag principle" further weakens the deterrent effect of the system.

Judicial practice urgently needs to go beyond the "all or nothing" responsibility identification model and turn to a dynamic hierarchical obligation system: for super-large platforms, they should be subject to active filtering obligations based on their technical capabilities and dissemination influence; for malicious repeat infringers, punitive damages can be applied without the restrictions of the safe harbor. At the same time, the cost of confirming rights can be reduced through tools such as copyright pre-registration and blockchain evidence storage, and the efficiency of the "notice-takedown" process can be reconstructed.

Future institutional design should recognize the core position of technology governance-legal rules must be deeply coupled with technical solutions such as AI review, content fingerprinting, and big data monitoring, rather than simply transplanting the responsibility logic of the paper era. Only by establishing a rebalancing mechanism between protecting creative vitality, platform innovation and user freedom can the safe harbor truly become a "safe haven" to promote the

prosperity of digital culture, rather than a "shelter" for infringement. It should be pointed out that the empirical data in this article mainly comes from public judicial documents, and there is a statistical blind spot for infringement disputes that have not entered litigation. Future research can further deepen the analysis by combining the platform background data.

References

[1] LEI, Yizhou. (2020). The Unsafe "Safe Harbor": Rethinking Copyright Infringement Liability of Online Video Platforms in China. Electronics Intellectual Property, (03), 23–39. 16

[2] CHEN, Xueli. (2020). Clarifying the Security Obligations and Illegal Liability of Online Video Platforms: Interpretation of the Infringement Case on Dangerous Videos Published on Huajiao Live, Weibo, and Kuaishou. Contemporary Communication, (01), 82–85. 2

[3] QU, Jiazheng. (2022). Research on Copyright Infringement Identification and Protection Paths in Online Short Videos [Master's thesis, Jiangsu University]. DOI:10.27170/d.cnki.gjsuu.2022.002624.

[4] CHEN, Yalan. (2022). Research on Copyright Infringement Issues in Online Short Videos [Master's thesis, Jiangxi University of Finance and Economics]. DOI:10.27175/d.cnki.gjxcu.2022.000721.

[5] ZHA, Lili. (2023). Protection of Minors' Network Privacy Rights in "Short Video Platforms" [Master's thesis, Henan University of Economics and Law]. DOI:10.27113/d.cnki.ghncc.2023.000757.