

Study on the Indirect Liability of Interactive Live Streaming Platforms in Internet Copyright Infringement Disputes

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Abstract. At present, the principle of no-fault liability or indirect liability of platforms has not been established in Internet short video infringement disputes, resulting in the confusion in judicial practice and the dilemma of the copyright protection for live broadcasters. It is necessary to combine the theory of interest measurement and the principle of indirect responsibility, refer to the relevant legislation in foreign countries improve the relevant legislative spirit and basic principles at the top-level design level as soon as possible, unify the scale of adjudication and tighten the net of comprehensive judicial protection of copyright of live broadcasters on internet platforms.

Keywords: Copyright; Interactive live broadcast platform; Indirect infringement; No-fault liability; The theory of interest measurement.

1. Problems raised: Gaps in the legal regulation related to the infringement of the network interactive live platform

1.1 Social and theoretical background

In the era of we media, infringement occurs frequently in online interactive live broadcasting, and the number of lawsuits related to it has increased, with users as direct infringers infringing on the performance rights of authors, and live broadcast platforms in which there is acquiescence, help and even dissemination of infringing works. With the rapid development of the trading industry of network short video and its surrounding cultural products, many legal problems have also arisen. The current cases of copyright infringement liability disputes on the Internet interactive live broadcast platform frequently occur in courts around the world. However, in the case of copyright infringement on the Internet interactive live broadcast platform in judicial practice, it is directly presumed that there are also some theoretical and practical problems that are difficult to solve in the application of the "safe harbor rules" within the scope of this field. The basic infringement liability elements "notice + deletion" in the current legal system also have no way to the purpose of achieving a comprehensive and systematic governance and protection of the rights of the Internet short video platform in "Before - During - After" mode, not to mention the inability to effectively address the identification of indirect infringement of the webcasting platform. [1].

Reviewing the relevant cases that have emerged So far, it can be found that there are only relatively scattered adjudication documents for the infringement of the Internet short video platform, and there is no official guidance or other legal sources yet, which leads to inconsistency of judgment standards of adjudication scale in judicial practice on the basic issues such as the identification of the rights of the Internet live platform, the status of ownership, infringement liability, and the boundary of rights, and a large number of "different judgments in the same case".

The copyright infringement liability of network service providers has long been a theory formed in the academic circles, therefore, as a new form of network service providers, the network interactive live broadcasting platform should bear indirect liability. With the development of Internet technology and business forms, new variants of the form of network service providers have emerged, of which the network interactive live broadcasting platform is representative and where the most infringements occur.

Therefore, it is scientific and feasible to use this theory to systematically analyze and regulate the tort liability of live broadcast platform.

1.2 Literature review of network interactive live broadcasting platform and the Theory of Indirect Liability in Copyright Law

At present, there are relevant cases in China, but the research on the behavior of the live broadcast platform is not systematic, and there is no system to effectively regulate it. From the perspective of research units, the article "Research on the current situation and development of online interactive live broadcast content" has made an in-depth study on the historical evolution and content analysis of the online interactive live broadcast platform, but it mainly studies it from the perspective of media and literature, while the number of relevant literature studying online interactive live broadcast from the perspective of copyright law is small, and the research focusing on the online interactive live broadcast platform is even less. From the research perspective, the copyright infringement liability of network service providers is a systematic and mature theory, and it is an indisputable fact that the platform should bear indirect liability. However, after all, the indirect liability of the network interactive live broadcasting platform in Internet copyright infringement disputes is a new problem of the copyright infringement liability of network service providers under the new normal of Internet development. Old theories cannot properly solve new problems without development.

1.3 Research value and significance of this paper

The existing theoretical results provide a solid theoretical basis for the research of this paper. However, in order to fill the gap of legal regulation on infringement of online interactive live broadcasting platform, it is necessary to further develop and derive on the existing theoretical basis, so as to make the indirect infringement theory adapt to the development of the new business form of the Internet. The author believes that it should be an indisputable fact that the internet live broadcasting platform bears indirect liability in e-commerce disputes. However, it is generally considered that the principle of imputation is the principle of fault liability so the safe harbor rule can be used. However, if all the rules are used, the rights and obligations undertaken by the platform do not conform to the principle of interest measurement, so that the interests of the live broadcasting platform get inclined protection and the rights and interests of the broadcasters will be difficult to be fully guaranteed. Moreover, the simple application of the safe harbor rule or the "notice + removal" rule can further lead to platforms evading liability or choosing to infringe because of the low cost of violation.

1.4 Research ideas of the text

This article will apply the theory of indirect liability of copyright law, which has the status of general theory in the field of intellectual property law, and take the indirect liability of the network interactive live broadcasting platform in Internet copyright infringement disputes as the research object. Through the method of deductive reasoning, this paper will analyze the necessity and legitimacy of the principle of no-fault liability as the imputation method for the live broadcasting platform in the network interactive live broadcasting infringement disputes, and draw a conclusion that, In order to balance the interests of the platform and the authors of the live broadcast works, the principle of no-fault liability should be adopted in the tort disputes of online interactive live broadcast.

2. Identification of the principle of no-fault liability in copyright law

2.1 Overview of the principle of no-fault liability

The principle of no-fault liability is a special principle in the imputation principle of civil law. This principle means that the subjective fault of the infringer is not taken as the basis for determining the liability, as long as there is a specific fact of damage, it should bear the corresponding liability.

The constitutive requirements of the principle of no-fault liability are as follows: first, there are objective facts of damage; Second, there are special legal Infringement act. As no-fault liability is actually a situation that increases the possibility of the infringer to bear the liability and aggravate the

burden of the perpetrator, we must strictly abide by the Legalism; Third, there is a causal relationship between the tort and the objective facts of the damage; Fourth, the infringed person does not need to bear the relevant evidence of the infringer. That is, once the fact of infringement is established, the perpetrator should bear the liability for tort damages in any case.

2.2 The special performance of the principle of no-fault liability in copyright law

As a model of liability for infringement regarding network service providers, the principle of no-fault liability is adopted by the theory of American copyright law. In the theory of American copyright law, the liability of the infringer for the actual losses is imputed by no fault liability. The subjective fault of the infringer exists only as a discretionary measuring factor for the amount of damages. No-fault liability in copyright law specifically means that the network service provider is liable for the infringement of using the system or network regardless of whether the network service provider is at fault in the process of providing intermediate services. In this imputation principle, the network service provider, as the transmitter, storage or cache of information, is considered to have the obligation to audit and supervise the information. In terms of tort liability disputes in the field of copyright, the general civil imputation principle should be the principle of no-fault liability, so there is no need to consider the subjective mentality of the infringer. However, it is worth noting that no fault liability can be applied only under special provisions of the law. For details, see the tort liability part of the Civil Code of China. However, at present, China has not established the principle of no-fault liability in the copyright law, nor has it explicitly stipulated copyright infringement in the tort liability series of the civil code. Therefore, based on the current legal system, the principle of fault liability should still be applied to the infringement of the Internet short video live broadcasting platform in principle.

However, based on the case analysis, some courts have already started to explore the application of the principle of no-fault liability or similar basic principles to deal with and deal with relevant cases in judicial practice. For example, although the Guangzhou Intellectual Property Court held that the principle of no-fault liability was not applicable under the current relevant systems, the court started with the principle of fairness and provided equitable relief to the relevant subjects of the live broadcast. The court held that the principle of no-fault liability is only applicable to a few exceptions, and most of them are applicable to civil torts. One of the requisites for applying the principle of fairness is that both parties have no fault, so it can be used as a relevant norm for the supplemental application of the no-fault liability principle [2]

2.3 Key points of applying no fault principle

The author believes that, with respect to the infringement liability of online live-streaming platforms, the statutory duty of examination and supervision of the live-streaming platforms should be the key and difficult point in the application of this doctrine. The reason why network service providers have audit and supervision obligations is that they play an important role in the process of providing intermediate services. The guiding case of the Supreme People's Court also clearly pointed out the important role and function of the network service provider. The network service provider has the corresponding duty of care to review the application when it receives the relevant usage fees and derives direct economic benefits from the application. If an Internet service provider knows or should know that an Internet user infringes by using the Internet service system and fails to take necessary measures such as deletion and shielding, it is an act of helping infringe and shall bear corresponding legal liabilities. Where the subject involved in a case could obviously identify that the application program was not legally authorized, but failed to take reasonable measures and had a subjective fault, he/she shall bear the corresponding legal liability. [3]

3. The necessity and rationality of applying the principle of no-fault liability to the network live broadcasting platform in the infringement cases

3.1 Formal Rationality

The author believes that, first of all, in terms of form, the provisions on intellectual property rights in the user agreement signed between the network interactive live broadcast platform and users reflect a higher obligation of audit and supervision. From the formal analysis of user agreements, it can be seen that the user agreements of the network interactive live broadcast platform have different provisions on intellectual property rights. There are generally three types of provisions in the user agreement for the intellectual property generated during the live broadcast: no relevant provisions, provisions that the right belongs to the user and provisions that the right belongs to the platform. In the first two cases, as a network service provider, the webcast platform can apply the "notice + delete" rule to the infringement of copyright that occurs on the platform. However, if the host and the live broadcasting platform agree that the intellectual property rights of the live broadcasting results belong to the platform, the live broadcasting platform enjoys higher rights. According to the principle of matching rights and obligations, the live broadcasting platform should assume the obligations matching the rights it enjoys and bear the infringement liability for the infringement involved in the lawsuit. At present, the user agreements of the major live broadcasting platforms in the market stipulate that the intellectual property rights generated by users during the live broadcasting process belong to the platform. Therefore, from the formal point of view, the live broadcasting platform should undertake higher audit and supervision obligations. In judicial practice, there are also relevant cases that have concluded that while enjoying intellectual property rights, the webcast platform should have a higher obligation to pay attention to and review the legitimacy of the live content, and should bear tort liability when the live content involves infringement.

For example, in a copyright infringement case, the network anchor broadcast a song online on the live broadcasting platform operated by the defendant. After the live broadcast, the anchor made a video of the live broadcast process and saved it on the live broadcast platform and the audience could watch and share it through the live broadcast platform. Through investigation, it was found that the live broadcast agreement signed between the network anchor and the defendant stipulates that all the results produced by the anchor during the live broadcast would be enjoyed by the defendant. The plaintiff argued that the defendant had infringed upon his right to information network transmission of the song. The court held that although the anchor was the producer and uploader of the video, according to the live broadcast agreement, the live broadcast platform was the real owner of the intellectual property rights of the video involved, and the defendant and the anchor shared proportionally the income from viewers' bounty during the live streaming. Therefore, the defendant is not only a network service provider, but also the obligee of audio and video products on the platform, and enjoys the revenue generated by these achievements. Under such circumstances, the "notice + deletion" rule obviously does not apply. Although the live broadcasting platform promptly deleted the relevant videos when it learned that the videos involved were infringing, it cannot be exempted from liability. According to the principle of matching rights and obligations, the live broadcasting platform shall bear corresponding responsibilities for the legal consequences arising from the live broadcasting results. [4]

3.2 Substantial Rationality

In essence, the live broadcast platform often accounts for a larger proportion of the interactive live broadcast profit sharing, and it should be required to undertake higher audit and supervision obligations. According to the theory of interest measurement, the distribution proportion of profits determines the possibility of damage in the relationship between rights and obligations. The more profits and resources they occupy, the greater the probability of being nibbled up by other interest subjects, and the more unbalanced this interest relationship is. Therefore, both legislation and judicature should emphasize the balance of interests and give more legislative and judicial protection

to the weaker side. If the basic principle of interest measurement is applied to the relevant interpretation of tort liability for damages, the logic and rules of interest measurement theory in the formulation and interpretation of laws should be upheld, the logic and rules of interest measurement theory in the formulation and interpretation of laws should be upheld. The application of interest balance theory is to make the relevant legal relations and rights and wrongs of tort damages more reasonable and convincing more people. Therefore, if we fail to judge the infringement of the Internet interactive live broadcasting platform through the interest measurement theory, but directly interpret the contract terms from the perspective of helping to protect the copyright owner or serve as the basis for the internet live broadcasting platform to assume no-fault liability, and take the no fault liability as the basis for the preferred value judgment, it is not only highly subjective, but also without any methodological jurisprudence.

To sum up, through the analysis of profit distribution and the matching of rights and obligations, the network interactive live broadcast platform needs to undertake higher audit and supervision obligations.

4. Conclusion

Based on the above theoretical analysis and practical case observation, the network interactive live broadcast platform applies the principle of no-fault liability to attribute responsibility. The use of the principle of no-fault imputation focuses on whether the platform should undertake higher audit and supervision obligations. From the above analysis, it can be seen that, whether from the principle of no-fault liability or from the perspective of interest measurement theory, the live broadcasting platform should undertake higher audit and supervision obligations in form or substance. Therefore, the principle of no-fault imputation should be used for infringement of the live broadcasting platform.

This conclusion can well solve the problem of unequal rights and obligations of the interactive live broadcast platform. If this method of imputation can be determined in the form of legal provisions for direct reference by the court, it will fill the gap in the legal regulation of online interactive live broadcast platform infringement. In order to solve the infringement problem in the rapid development of online interactive live broadcasting, help the court to regulate the infringement of live broadcasting platform reasonably and effectively in relevant lawsuits, so as to promote copyright protection. In addition to the contribution at the practical level the conclusion has also conducted new exploration and development in theory. This conclusion belongs to the intersection of copyright law and tort liability law, which enriches and develops the original theory from a new perspective.

However, in the context of the development of modern Internet enterprises in China, the impact of regulating the indirect tort liability of live broadcast platforms with the principle of no-fault liability is also a problem worthy of attention and consideration. How to balance the development of the online interactive live broadcasting industry in the we media era with the protection of originality and copyright is an issue that needs further study, and needs to be considered in the implementation of this theory in combination with practice situations.

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