Ограничение правила «уведомления и удаления», применяемого в отношении новых сетевых сервисов

The Limitation and Outlet of «Notice-and-Takedown» Rule Applied in New Network Service

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DOI: 10.17803/2587-9723.2023.6.156-163

Аннотация. *В век стремительного развития интернет-технологий и инноваций в бизнес-модели быстро развиваются новые сетевые сервисы, такие как небольшая программная платформа и облачный сервер в Китае. Однако в судебной практике существует множество проблем, нарушающих обязательство Notice-and-Takedown в новой сетевой службе. Правильное понимание и гибкое применение правила Notice-and-Takedown является необходимым для новых торговых услуг онлайн-платформы в соответствии с Законом о деликтной ответственности. Чтобы сбалансировать интересы провайдеров интернет-услуг и правообладателей, правовое позиционирование правила Notice-and-Takedown должно быть четко определено в законе, чтобы правильно применять его в качестве оговорки об освобождении. В то же время при нарушении прав в Интернете необходимые меры, которые должны принимать интернет-провайдеры, должны быть правильно определены в соответствии с конкретными обстоятельствами. В частности, правило Notice-and-Takedown может быть применено к новой сетевой услуге путем уточнения атрибута отказа от ответственности, принятия «уведомления о передаче» и требования к новому поставщику сетевых услуг раскрывать информацию конкретных разработчиков, когда это необходимо.*
Ключевые слова: *правило Notice-and-Takedown, новые сетевые услуги, оговорка об ограничении ответственности, необходимые меры.*

Abstract. *With the rapid development of Internet technology and business model innovation, new network services such as the small program platform and cloud server in our country develop rapidly. However, there are many problems in the judicial practice of the platform that violates the «Notice-and-Takedown» obligation in the new network service. The correct understanding and flexible application of the «Notice-and-Takedown» rule is the necessary meaning of the new online service platform trading services in accordance with the Tort Liability Law of the People's. In order to balance the interests between Internet service providers and right holders, the legal positioning of «Notice-and-Takedown» rule should be clearly defined in the application of law, so as to correctly apply it as an exemption clause.*

At the same time, when Internet infringement cases occur, the «necessary measures» that Internet service providers should take should be properly determined according to the specific circumstances. Specifically, the application of the «Notice-and-Takedown» rule to the new network service can be solved by clarifying the disclaimer attribute of the «Notice-and-Takedown» rule, taking the «transfer notice» as an implementable necessary measure and requiring the new network service provider to disclose the information of specific developers when necessary.
Keywords: *«Notice-and-Takedown» Rule; New Network Services; Disclaimer Clause; Necessary Measures*

Relying on the rapid iterative upgrading of Internet technology and the innovative development of business models, the development momentum of new network services such as small program platforms and cloud servers has mushroomed. The emergence of new network services makes people's life more convenient, but it also brings new legal problems. In judicial practice, how to apply the Notice-and-Takedown rule under the background of new network services has brought a severe test. In the practice of solving this frequent phenomenon, the «Notice-and-Takedown» and «notice-and-take necessary measures» stipulated in Article 36 of China's Tort Liability Law are important rules that not only safeguard the legitimate rights and interests of Internet platforms and healthy development, but also take into account the due value of intellectual property protection in the case of new network services, which better balance the interests of all parties. And promote the healthy development of the Internet service industry. However, because the technology and service of the Internet service platform are different from the ordinary service, there are many problems in the applicable rules for the liability of Internet intellectual property infringement cases in judicial practice. Among them, the most prominent problem is that China currently has no clearly defined legal rules to deal with the frequent phenomenon of intellectual property infringement in the context of new network services. In judicial practice, it is not clear whether new network service providers can apply the provisions of «Notice-and-Takedown». Thus, the academic and practical circles have aroused widespread concern and debate on the small program platform case and the cloud server case. If the specific rules applicable to new network services in Internet intellectual property infringement cases cannot be accurately defined, it will lead to the legitimate rights and interests of right holders cannot be reasonably protected, hinder the service experience of Internet users, make it difficult to achieve Internet intellectual property protection, and hinder the healthy development of new network service industry.

1. The practical dilemma and legal analysis of the application of the «Notice-and-Takedown» rule for new network services

Based on the rapid development and continuous iterative upgrading of the Internet, many new changes have taken place in the types of new network service platforms, both in terms of technology and services, which will inevitably lead to many problems in the application of relevant liability rules in judicial practice for new Internet intellectual property infringement cases. In the judicial practice of intellectual property infringement cases under the background of new Internet services, there are differences on the identification of the legal attributes of new Internet services, whether new Internet services can be the eligible subject of the «Notice-and-Takedown» rule and how to apply it.

1.1. The legal characterization of new Internet service providers

The academic circle has not reached a consensus on the concept of «Internet service provider», which is still in the stage of extensive discussion. The legislative interpretation of Tort Liability Law holds that it includes two categories: network technology service provider and network content provider.[1] Some scholars believe that it should be divided into different types based on the ability of network service providers to identify and control content.[2] China's «Regulations on the Protection of Information Network Communication» with article 20 to 24 of the four provisions of the network service providers according to the provision of different services are divided into four categories, specifically for automatic access, automatic transmission services and automatic storage services, information storage space services and search, link services. However, with the innovative development and iterative upgrading of Internet technology, the service style provided by network service providers has exploded, and the scope of service has also been extended to various industries. Therefore, the four categories of services stipulated in the Regulations on Information Network Communication are difficult to include such new network services with «novelty» in the technical field and service mode. Among them, the most representative is the small program platform and cloud server service that have caused a lot of controversy and discussion in the academic and practical circles.

For example, in the «WeChat Mini Program case», the first instance judgment was based on the fact that the mini program developer provided a web page structure and access service, which was considered to be similar to automatic access and automatic transmission services.[3]

However, this kind of simple analogy to judge the new network service may be inappropriate. According

[1] See: *Wang Sheng-Ming*. The interpretation and legislative background of tort Liability Law of the People's Republic of China [M]. Beijing : People's Court Press, 2010. P. 180.

[2] See: *Si Xiao*. On the Setting of Service Providers' Duty of Care in Intellectual Property [J] // Science of Law (Journal of Northwest University of Political Science and Law). 2018 [1]. P. 78—88.

[3] See: Hangzhou Internet Court (2018) Zhejiang 0192 Civil Trial No. 7184 Civil Judgment. The first instance judgment of «WeChat mini program case» has a detailed analysis. URL: https://wenshu.court.gov.cn/ (accessed: August 30, 2023).

to the characteristics of the service provided by the new network service platform in this case, its service model can also be classified as link service. Taking the «WeChat Mini Program case» as an example, in terms of the technology and service relationship between the new network service platform and the WeChat mini program platform service in this case, its essence is more similar and appropriate to the linked service, so it is reasonable to apply the necessary measures of «shielding» or «disconnecting» stipulated in Article 36 of the Tort Liability Law to achieve the purpose of exemption.

Another example is the «Alibaba Cloud Server case,»[4] after trial, the court of second instance finally found that the cloud server rental service provider belongs to the «network service provider» stipulated in Article 36 of the Tort Liability Law, rather than one of the four categories of services stipulated in the Regulations on the Protection of Information Network Communication, so it should be regulated by the Tort Liability Law. It is not subject to the Regulation on the Protection of Information Network Communication.

The author believes that the judgment made by the court based on the actual situation and special circumstances of the new network services in each case is correct. Taking the «Alibaba Cloud Server case» as an example, the author believes that it has the characteristics of both access services and equipment suppliers, so the cloud server rental service provider will not review and control the information in the application of the specific operators under it in their daily operations.[5] Therefore, the court finally identified the cloud server as a new type of network service provider with reasonable grounds, which should be subject to the provisions of Article 36 of the Tort Liability Law.

1.2. Whether the «Notice-and-Takedown» rule can be applied to new network services

With the rapid iteration and upgrading of Internet technology and the rapid innovation and development of business service models, the development momentum of new network services such as small program platforms and cloud servers with great characteristics has mushroomed. At the same time, there are also many problems in the application of law in judicial practice, such as whether the «Notice-and-Takedown» rule can be applied to the new network service? What is the scope and type of «Internet service provider» in Article 36 of the Tort Liability Law? Does it include new types of Internet service providers? This is the primary issue that needs to be resolved urgently in new network service cases such as the small program case and the cloud server case.

The «Regulations on the Protection of Information Network Communication» divides network service providers into automatic storage services, information storage space services, automatic access, automatic transmission services, and search and link services according to the different services provided, and stipulates the responsibility of network service providers and the necessary measures of «safe haven exemption», which belongs to the «main legislation» mode. It should be noted that although the application of the «main legislation» model to judge has its advantages, but its inherent drawbacks in the new network service infringement field is more obvious.[6]

On the one hand, the academic circle has not yet formed a unified view on the concept of «Internet service provider», which is an open concept that has not been widely defined. Some scholars divide it into two categories: network technology service provider and network content provider. Some of them are divided into different types based on the ability of network service providers to identify and control content.[7]

And with the rapid iteration and upgrading of Internet technology and the innovative development of business service models, a variety of new network services have sprung up. Because of the large number and different styles, it is difficult to cover all the four types of service subject stipulated in the Regulation on the Protection of Information Network Communication, and the limitations of such an enumeration legislative model will be highlighted. On the other hand, the Regulation on the Protection of Information Network Communication has a lower legal status than the Tort Liability Law, which is reflected in the WeChat mini program case. Hangzhou Internet Court gave a clear explanation that Article 36 of the Tort Liability Law, as a general provision for adjusting civil torts in the Internet field, does not limit the scope and type of network service providers. Adjust all infringements that occur on the Internet.[8]

Imagine if in practice there is a new type of network service infringement dispute case, but the new network service provider does not belong to the four types of service subject of the Information Network Communication Protection Regulation, then what tort liability clause should be applied at this time? If the new network service provider is not a qualified

[4] Ledong Excellence v. Alibaba Cloud copyright infringement case. Beijing Intellectual Property Court (2017) Beijing 73 Civil Final Case No. 1194 // URL: https://wenshu.court.gov.cn/ (accessed: August 28, 2023).

[5] See: *Bi Wen-Xuan*. Qualitative and Liability Construction of New Network Service Providers — Also commented on the case of Alibaba Cloud Server [J] // Electronics Intellectual Property. 2020 [2]. P. 80.

[6] See: *Li Yang, Chen Shuo*. Re-review of «Notice-and-Takedown» Rule [J] // Intellectual Property. 2020 [1]. P. 25—38.

[7] See: *Wang Qian*. Copyright Protection in the Network Environment [M]. Beijing : Law Press China, 2011. P. 251.

[8] See: Hangzhou Intermediate People's Court of Zhejiang Province (2019) Zhejiang 01 Civil Final Judgment No. 4268 // URL: https://wenshu.court.gov.cn (accessed: August 29, 2023).

subject of the «Notice-and-Takedown» rule, then is it contrary to the purpose of the Tort Liability Law? From the Alibaba Cloud case, the court of second instance gave a clear answer, that is, although the cloud server rental service does not belong to any of the existing classification of network service providers, from the form of law and objective consideration,» other network technology service providers» can also apply the «Notice-and-Takedown» rule stipulated in article 36 of the Tort Liability Law to protect their legitimate rights and interests. And not only limited to storage, search link service providers.

Finally, the court applies Article 36 of the Tort Liability Law to determine the liability of the cloud server. In the WeChat mini program case, the Hangzhou Internet Court explained that the WeChat mini program service did not fall within the scope of the four types of service subjects stipulated in the Regulations on the Protection of Information Network Transmission, so the provisions of Article 36 of the Tort Liability Law were finally applied to determine whether the «new network service provider» was an «accomplice» of Internet infringement. It is not difficult to see that the choice of the application path of Article 36 of the Tort Liability Law, which is at a higher legal level, is facing a difficult situation.

1.3. How does the «Notice-and-Takedown» rule apply to new online services

In China's laws and regulations on the «Notice-and-Takedown» procedure, the Internet service provider should «immediately delete or disconnect» after receiving the notice, which is easy to give the public the impression that the application of the «Notice-and-Takedown» rule is based on the premise that the Internet service provider can implement «positioning and clearing».[9] The deletion, shielding, disconnection, etc. provided for in Article 36 of the Tort Liability Law are not all the necessary measures for the Internet platform to escape liability, that is, after the Internet platform is effectively notified by the right holder, the necessary measures it should take are not limited to the above practices. For example, in the Alibaba Cloud case, the court pointed out that according to the Regulations on the Protection of Information Network Communication and the Tort Liability Law and other legal provisions, combined with judicial and industry practice, the necessary measures can be divided into two categories: the first type is the measures that can prevent the infringement in time, including deletion, shielding, disconnecting links, etc.[10]

The second category is the network service provider based on the type of rights or their own special nature, it does not need to and can not be exempted by taking measures such as deletion, but can take other measures to achieve the conditions of exemption, such as notification.[11] Another legal application problem faced by new network service infringement cases is that when the new network service platform receives an effective notice from the right holder, what measures should be taken to achieve the purpose of exemption?

The rapid development of science and technology and the innovation of business models produce new network services, and legal rules cannot and should not immediately revise specific services for each new network service, which is not in line with the stability of the law, so the best solution is to interpret existing rules to adjust and regulate such new problems. In terms of the current legal provisions, it remains to be clarified whether the «Notice-and-Takedown» rule is applicable in judicial practice and how to use it to adjust the legal relationship of new network services. For example, the WeChat mini program case and Alibaba Cloud Server case adopted different judgment methods and trial results, which directly reflects the complexity of such problems, which also reflects from the side that the application of the «Notice-and-Takedown» rule still needs in-depth research.

2. The legal positioning and theoretical interpretation of the «Notice-and-Takedown» rule

In the current theoretical discussion and judicial practice, the disputes surrounding the application of the «Notice-and-Takedown» clause involve the following specific issues, including the legal positioning of the «Notice-and-Takedown» rule, the understanding of the platform to take necessary measures, and the difference between «necessary measures» and «stop infringement». The core reason for these disputes lies in the vague understanding of the «Notice-and-Takedown» rule.

2.1. The legal positioning of the «Notice-and-Takedown» rule

According to the available historical data, the «safe haven» system first appeared in the United States. From the development of relevant cases in the United States, the legislative process of the Digital Millennium Copyright Act and its provisions, it can be seen that the purpose of providing «safe harbor» for Internet service providers is to clarify the standard of possible infringement liability of Internet service

[9] See: *Hou Nan-Zhu*. Application of «Notice and Takedown» Rule to New Types of Network Services — Illustrated by the case of Alibaba Cloud and WeChat Mini Programs [D]. Shanghai Jiao Tong University, 2020. P. 18.

[10] See: *Li Yang, Chen Shuo*. Re-review of «Notice-and-Takedown» Rule [J] // Intellectual Property. 2020 [1]. P. 25—38.

[11] See: *Wu Han-Dong*. Tort Liability for Indirect Infringement of Copyright in the Internet according to Article 36 of the Tort Law PRC. [J] // China Legal Science. 2011 [2]. P. 38—47.

providers, so as to make the liability risk more predictable, and to appropriately limit the liability of Internet service providers, so that their liability burden is not too heavy.[12]

The «safe haven» rule and the «Notice-and-Takedown» rule are both exempt clauses. The Digital Millennium Copyright Act of the United States stipulates that if the network service provider acts in accordance with the measures and conditions stipulated in the «safe haven» rule, then the network service platform is of course not liable for network infringement. China's «Notice-and-Takedown «rule is rooted in the «safe harbor» rule transplanted from the product, its purpose is to promote and regulate the healthy development of the Internet industry.

However, the Chinese legislature has not made clear whether the provision of the Internet service provider violating the «Notice-and-Takedown» rule is directly recognized as infringement or according to the provisions of the Tort Liability Law. Compared with the exemption of restrained and neutral behavior of Internet service providers in the United States, the expression of the «Notice-and-Takedown» rule in China is more similar to the liability clause from the perspective of the interpretation of the text.[13]

In practice, the court gradually breaks the limit of the disclaimer of the «Notice-and-Takedown» rule, which makes Internet service providers bear quite strict liability for network tort. To sum up, in the process of invoking the «safe harbor» rule, there is some deviation in the legal application of the «Notice-and-Takedown» rule in our country, so that the provision cannot play the role of «safe harbor» exemption in judicial practice.

2.2. The comparison between «Notice-and-Takedown» and «Notice plus taking necessary measures»

From «Notice-and-Takedown» to «Notice and take necessary measures», from the perspective of dispute resolution, it is more like a «non-litigation» measure, which is essentially a self-relief attribute. From the relevant laws that have been introduced in China, it is not difficult to see that the «Regulations on the Protection of Information Network Transmission Right», «Tort Liability Law» and «Electronic Commerce Law» on the framework of Internet infringement provisions, and then the relevant provisions and descriptions of «Notice-and-Takedown» to «notice and taking necessary measures». Whether it is the «Notice-and-Takedown» rule, the degree of neutrality or perfection of this disclaimer clause system is different.[14]

In the Regulations on the Protection of the Right of Information Network Transmission, the network service platform is a neutral party, aiming to balance the interests of the right holder, the network service platform and its service objects. At that time, the judicial authorities have yet to determine who is the right holder and who is the infringer, so the Internet service providers could not «blindly» deal with the situation, let alone show favoritism.

This is conducive to balancing the interests of both the network service object and the right holder, and also reflects that the «Notice-and-Takedown» rule is a self-saving measure. However, from the «Notice-and-Takedown» stipulated in the «Information Network transmission right Protection Regulations» and «notice and take necessary measures» stipulated in the «Electronic Commerce Law», we can see that China's rules on Internet infringement exemption clauses and measures are relatively unequal.

Comparatively speaking, the legal level of the Tort Liability Law is higher than that of the Regulations on the Protection of the Right of Information Network Communication and the Law of Electronic Commerce. However, the provisions of its exemption clauses only provide for «notice» and «taking necessary measures», and do not include the self-relief measures such as anti-notice and recovery provided for in the Regulations on the Protection of the right of Information Network Communication and the Law of Electronic Commerce. So that the system has yet to supplement corresponding measures to improve its unbalanced legal system.

2.3. The difference between «necessary measures» and «stopping infringement»

"Notice-and-Takedown» is different from «disconnect», «delete», «shield» and other measures taken after judging infringement in judicial judgment, it is a relatively independent private relief procedure. Considering that measures such as «disconnection», «deletion» and «shielding» can be self-relief measures stipulated in the disclaimer clause of » Notice-and-Takedown or «Notice and taking necessary measures», and can also be a way of bearing civil liability in judicial practice.

Therefore, in judicial practice, self-relief measures such as «Notice-and-Takedown» and «notice plus necessary measures» should be distinguished from civil liability «stopping infringement» methods.

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[12] See: *Xue Hong*. A review of copyright infringement liability of Internet service providers [J] // Science Technology and Law Chinese-English. 2000 [1]. P. 57.

[13] See: *Kong Xiang-Jun*. Application of «Internet Article» to New Types of Network Service — From «Notice-and-Takedown» Rule to «Notice and Taking Necessary Measures»[J] // Journal of Political Science and Law. 2020 [1]. P. 52—66.

[14] See: *Wang Jie*. New Interpretation on Hosting ISPs' Duty of Care [J] // Science of Law (Journal of Northwest University of Political Science and Law). 2020 [3]. P. 103.

It is precisely because «Notice-and-Takedown» and «notice plus necessary measures» are different from the «disconnection», «delete», «shielding» and other measures taken after the judgment of infringement in judicial judgment, in fact, it is a self-relief system in the network infringement liability, so this self-relief mode can quickly and efficiently solve the disputes between the network service provider and the network user and the infringer. «Notice-and-Takedown» and «notice-and-take necessary measures» make the right holder and the dispute infringer to the network service provider as a bridge to fight, in order to achieve the purpose of self-relief and then escape liability. Among them, «delete» or «necessary measures» are the specific forms of self-relief, not legal responsibility, but related to the legal responsibility that may occur later.[15]

This is different from the civil liability bearing methods in judicial practice. «Deletion», «disconnection» or «shielding» are the specific ways of liability bearing when the network service provider constitutes an infringement in judicial trial. These are the specific measures for the infringer to stop the infringement, and the premise is that the court judges constitute an infringement, rather than self-relief measures.

3. Explore the way out of the application of the «Notice-and-Takedown» rule for new network services

The unification of private right protection and private right restriction is the foundation of maintaining the balance of intellectual property system, and the basis of this balance should be fully reflected in every development detail of intellectual property law. In the face of the development of «Notice-and-Takedown» and the loss of original functions, it is necessary to timely improve and correct guidance in the follow-up system design, gradually restore and improve the operating environment of intellectual property, so as to realize the healthy and orderly development of the social economy, and return to the original intention of the «Notice-and-Takedown» rule.

3.1. Clarify the disclaimer attribute of the «Notice-and-Takedown» rule

The basic framework of the «safe harbor» system design is that different types of network service providers are provided with different exemption requirements and obligations according to different network information content editing and control capabilities and different service natures.[16]

Therefore, in order to correctly apply and achieve the effect of exemption in judicial practice, we must first clearly identify the «safe haven» rule as an exemption clause belonging to a self-relief measure. This will further clarify the responsibility of network service providers, network service providers in dealing with complex network infringement events require a high degree of predictability, so that it can achieve the conditions of immunity, but also reduce the burden of responsibility of network service providers.

The design of the «safe haven» system in China's relevant laws is due to the consideration of the technological characteristics of the rapid innovation and development of network technology and the continuous promotion of the stable and orderly development of the network service industry with great development potential. Through legal provisions, the scope of network service providers do not bear responsibility and the self-relief conditions that can be exempted from legal liability. To provide a safe harbor for Internet service providers to evade their responsibilities.

Therefore, China's legislation should re-examine the essential attribute of the «Notice-and-Takedown» rule, absorb and invoke its exemption attribute, and accurately apply its legal attribute in judicial practice to reduce the heavy network infringement liability borne by the network service platform, and then promote the rapid, steady and healthy development of network services. Therefore, it should be clear that «safe harbor» is a disclaimer clause, and any network service provider who takes necessary measures according to the law will enter the safe harbor and will not bear tort liability.

3.2. «Transfer of notice» as an enforceable necessary measure

In its interpretation of the Tort Liability Law, the Civil Law Office of the National People's Congress Legal Work Committee proposed to include the «notice-acceptation-notification» channel into the necessary measures. According to this, Internet service providers should take measures consistent with their service technology and management level after receiving the notice from the right holder. If these necessary measures are beyond the level of its service technology and management, or will have a serious impact on the network service provider itself and others, the network service provider can take «notification transfer» measures to provide a solution for the right holder.

This approach not only helps the right holders to safeguard their legitimate interests, but also enables the stable and healthy development of the Internet

[15] See: *Kong Xiang-Jun*. Application of «Internet Article» to New Types of Network Service — From «Notice-and-Takedown» Rule to «Notice and Taking Necessary Measures» [J] // Journal of Political Science and Law. 2020 [1]. P. 52—66.

[16] See: *Feng Shu-Jie*. The Determination of Trademark Infringement Responsibility of Internet Service Provider: Study on Interpretation and Application of Article 36 of Tort Liability Law [J] // Intellectual Property. 2015 [5]. P. 10—19.

service providers. Taking into account the technological characteristics of rapid innovation and development and iterative upgrading of network technology, the modes and quantities of network infringements have also increased dramatically, and the scope of application of the «Notice-and-Takedown» rule has also been expanding, which makes it difficult for new network service providers to accurately identify network infringements when they occur.

Therefore, in order to prevent network service providers from being in a dilemma and alleviate the pressure of infringement liability they face, it is very necessary to identify «notification transfer» as one of the necessary measures that new network service providers can take. In practice, it is also more conducive to safeguarding the legitimate rights and interests of the right holder. Because in addition to patent rights, which are difficult to judge and professional, there are some infringement acts that are difficult to identify and judge. Such as infringement of trade secrets, because this type of infringement is very hidden, identification and judgment is very difficult; The infringement of the right of reputation is difficult to judge the truth of the facts.[17]

Therefore, it is difficult for the new network service providers to accurately «locate and remove» the passive notification, and may even cause the abuse of the deletion measures.[18] The application of «transfer notice» makes the network service provider not to take deletion measures due to the limitation of its technical service and management level, but to notify the suspected infringer in the way of «transfer notice» and then make other appropriate decisions according to its feedback information, so that this dilemma can be solved.

3.3. When necessary, the new network service provider may be required to disclose the information of the specific developer

With the development of network technology and network service industry, there are anonymous registered users in network communication and it is impossible to find out the real identity information, so the right holder cannot contact the suspected infringer directly to solve the infringement dispute, so the «Notice-and-Takedown» rule «came into being» and was established. The Supreme People's Court issued the Interpretation on Several Issues concerning the Application of Law in the Trial of Cases Involving Computer Network Copyright Disputes, which has relevant provisions on the publication of information of computer network infringer.

If the intellectual property right holder, upon finding that the infringer has infringed its intellectual property rights, proposes to the network service provider to publish the relevant registration information of the infringer in order to investigate the infringement liability of the perpetrator, the network service provider shall provide it to the right holder after the examination and verification, and shall bear the corresponding infringement liability in accordance with the law if it refuses to provide it without justifiable reasons.

In the case that the platform is nested or the technical characteristics make the infringement relatively complex and difficult to distinguish, if the right holder finds the infringement of the infringer to complain to the network service provider, then based on the principle of proportionality, the network service provider in addition to the choice of notification to the accused infringer, When necessary, the Internet service provider may also provide the information of the alleged infringer upon the application of the intellectual property right holder. The right holder directly issues a notice to the specific developers publicly disclosed by the new network service providers to protect their rights.[19]

In order to skip the first-level network service provider, that is, the intermediary, the right holder can directly contact the specific developer of the small program to solve the dispute, which greatly improves the efficiency of protecting the rights of network infringement cases.

Therefore, the author believes that in order to effectively protect the legitimate rights and interests of the right holder and reduce the litigation burden of the right holder, the new network service provider can be required to disclose the information of the specific developer of the infringement nested program when necessary, so that the right holder can skip the intermediary and directly face off with the specific developer of the small program, which is conducive to the rapid settlement of disputes, greatly improve the efficiency of rights protection, and prevent the expansion of damage consequences.

Conclusion

With the rapid development of Internet technology and network service industry, the technologies and ways of information network communication and network service are also new, and the infringement styles are also diversified, which brings a severe test to how to use network infringement rules in judicial practice. The understanding and application of legal rules cannot be divorced from the practical judicial

[17] See: *Yang Li-Xing*. Intellectual Property Tort Liability Rules in the Field of E-Commerce [J] // Modern Law Science. 2019 [4]. P. 78.

[18] See: *Feng Xiao-Qing*. Value Composition of Intellectual Property [J] // China Legal Science. 2007 [1]. P. 70.

[19] *Bi Wen-Xuan.* Qualitative and Liability Construction of New Network Service Providers — Also commented on the case of Alibaba Cloud Server [J] // Electronics Intellectual Property. 2020 [2]. P. 85.

practice. In the face of the technical characteristics of the rapid innovation and development of network technology and the iterative upgrading, the practice should sort out the new network service infringement dispute cases in detail, pay attention to the hierarchical order of special law and general law in the application of law, and clarify the internal logic and legal application relationship between priority application and supplementary application.

With the progress of China's legislative technology, the «Notice-and-Takedown» rule in the «Regulations on the Protection of Information Network Communication» has also gradually developed, which is reflected in the «notice and take necessary measures» rule stipulated in the relevant provisions of the «Tort Liability Law» and the «E-commerce Law». «Network service provider» has been listed as the eligible subject of Article 36 of the Tort Liability Law, and the new network service provider can «notify and take necessary measures» to avoid the risk of tort liability. In addition to «notification transfer», the Tort Liability Law has also made corresponding flexible expansion in the scope of necessary measures.

This is more conducive to the flexible application of the «Notice-and-Takedown» rule, so that the network service industry can develop in a more stable and orderly way. At the same time, judicial practice should also consider the specific behavior of the new Internet service providers, the characteristics of the new infringement and the necessary measures adapted to the new Internet service providers themselves, combined with the role of law in adjusting social relations and the characteristics of network infringement disputes, and consider the need for balance of interests of all parties on the basis of appropriate legal interpretation and proportionality principle. And then reasonably apply the «Notice-and-Takedown» rule, so that the network service providers can smoothly enter the harbor to avoid the risk of network infringement liability, and promote the healthy, orderly and long-term development of the network service industry.

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