

中美影视剧侵权相关案例、法律法规及学术论文

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一、中国影视剧侵权典型案例

(一) 哔哩哔哩二创《甄嬛传》视频侵权案

1. 案情简介

原告某某公司 9 经授权独占享有电视剧《甄嬛传》的信息网络传播权。被告某某公司 1 (B 站 PC 端)、某某公司 2 (B 站微信小程序) 用户上传名为《[鬼畜剧]阴阳怪气宫斗大戏(一)》的视频, 包含《甄嬛传》画面及配音, 构成侵权。原告两次投诉后, 被告未及时删除侵权内容, 索赔经济损失及合理费用 25 万元。

被告认为, 原告权属证据不足, 视频属用户二次创作 (改编权争议)。视频不构成实质性相似, 且平台已尽“通知-删除”义务, 不承担帮助侵权责任。微信小程序仅提供自动接入服务, 无法删除内容, 某某公司 2 非适格被告。

2. 争议焦点

(1) 侵权认定

- 被控视频是否构成对《甄嬛传》信息网络传播权的侵害?
- 视频经剪辑、配音后是否属于合理使用或改编作品?

(2) 平台责任

- 两被告是否构成共同帮助侵权?
- 微信小程序运营主体是否应承担责任?

3. 判决结果

(1) 侵权认定

- 实质性相似: 被控视频虽经剪辑、配音, 但整体情节、画面与《甄嬛传》高度重合, 构成实质性相似, 侵犯信息网络传播权。
- 合理使用抗辩不成立: 视频引用超出“适当比例”, 且含商业标签 (如“阴阳怪气”“鬼畜”), 不构成合理使用。

(2) 平台责任

- 帮助侵权成立: 两被告作为平台运营者, 收到两次有效通知后未采取删除措施, 构成帮助侵权, 需连带赔偿。
- 小程序责任: 微信小程序与 PC 端传播同一内容, 两被告内部分工不影响外部连带责任。

(3) 赔偿计算

- 总金额：1 万元（含经济损失及合理费用）。
- 计算依据：
 - A. 权利作品价值：《甄嬛传》知名度高、版权采买费达 1 亿元。
 - B. 侵权行为恶性：视频播放量 147 万次，平台通过广告获利。
 - C. 主观过错：两次投诉未处理，放任侵权扩大。
 - D. 合理费用：律师费、公证费部分支持（具体金额未披露）。

- 裁量因素：
 - A. 实际损失或违法所得难以计算，适用法定赔偿。
 - B. 视频对原作替代性有限，赔偿金额酌减。

4. 核心法律依据

- (1) 《著作权法》第 53 条：未经许可传播视听作品构成侵权。
- (2) 《民法典》第 1195-1197 条：平台“通知-删除”义务及帮助侵权责任。
- (3) 《信息网络传播权保护条例》第 22 条：平台免责需证明“未明知侵权且及时删除”。

（二）哔哩哔哩切片《玉楼春》侵权案

1. 案情简介

某某信息公司经授权独占享有电视剧《玉楼春》（2021 年优酷独播）的信息网络传播权及维权权利。被告某某数码公司（哔哩哔哩平台）用户上传大量《玉楼春》片段视频（总计 3113 条，播放量 1289 万次），部分视频标题含“玉楼春”关键词，内容直接切条原剧剧情，构成侵权。原告多次发送预警函（6 次）及侵权投诉（30 次），被告未及时删除侵权内容，且重复侵权用户（如“人老肝不动”等）持续上传，构成帮助侵权。要求赔偿经济损失及合理费用 1000 万元。

被告抗辩，平台仅提供存储空间服务，无法主动审查海量短视频，且已通过“关键词+人工审核”删除侵权内容。部分视频为二次创作（如剧情评论、鬼畜剪辑），可能构成合理使用。且短视频对长视频替代性有限，且原告未证明实际损失或平台获利。

2. 争议焦点

- (1) 侵权认定

- 被控视频是否构成对《玉楼春》信息网络传播权的侵害？
- 视频经剪辑、配音后是否属于合理使用或改编作品？

(2) 平台责任

- 被告是否构成“帮助侵权”？是否因“红旗标准”（侵权明显性）或未履行“通知-删除”义务而担责？
- 是否需对平台全部用户采取屏蔽措施？

(3) 赔偿计算

- 赔偿金额是否应参考《三生三世十里桃花》许可费 (9750 万元) 及广告损失？
- 算法推荐技术是否加重平台责任？

3. 判决结果

(1) 侵权认定

- 实质性相似：被控视频虽经剪辑，但整体情节、画面与《玉楼春》高度重合，构成侵权。
- 合理使用不成立：视频引用超出“适当比例”，且含商业标签（如角色名称），不构成合理使用。

(2) 平台责任

- 帮助侵权成立：被告作为平台运营者，未对重复侵权用户（如“人老肝不动”等）采取必要措施，构成帮助侵权。
- 屏蔽义务：仅需对明确列明的侵权用户采取屏蔽措施，无需对全部用户内容进行主动审查。

(3) 赔偿计算

- 总金额：50 万元（含经济损失及合理费用）。
- 计算依据：
 - A. 热播期影响：侵权视频传播正值《玉楼春》首轮播出（2021 年 7-10 月），热度高、播放量大。
 - B. 平台过错：多次投诉后未有效删除侵权内容，且对重复侵权用户未采取升级措施。
 - C. 合理开支：支持律师费、取证费等合理费用。
 - D. 排除因素：

- a. 《三生三世十里桃花》许可费与本案无关（长视频与短视频替代性有限）。
- b. 广告损失缺乏直接关联，且侵权视频为免费观看，未分流付费会员收入。

4. 核心法律依据

- (1) 《著作权法》第 53 条：未经许可传播视听作品构成侵权。
- (2) 《民法典》第 1195-1197 条：平台“通知-删除”义务及帮助侵权责任。
- (3) 《信息网络传播权保护条例》第 22 条：平台免责需证明“未明知侵权且及时删除”。

(三) 某甲公司诉某乙公司等侵害《与君初相识》著作权纠纷案

1. 案情简介

某甲公司通过授权取得电视剧《与君初相识》的独占专有信息网络传播权、广播权及维权权利。某乙公司运营的平台存在大量直播间直播《与君》（非交互式传播），部分直播间提供直播回放（交互式传播），涉嫌侵害某甲公司对案涉作品的广播权及信息网络传播权。某甲公司起诉某乙公司及 APP 下载服务提供方某丙公司，主张停止侵权并赔偿经济损失 800 万元及合理开支 10 万元。

● 关键侵权行为：

- A. 直播行为：平台内多个直播间（如“猫也”“小仙女”等）直播《与君**》，观众无法自由选择时间、地点观看（非交互式传播，侵害广播权）。
- B. 直播回放行为：部分直播间（如“兔子新影视”）保存直播内容供用户后续点播（交互式传播，侵害信息网络传播权）。

2. 争议焦点

(1) 某乙公司是否构成侵权：

- 是否侵害广播权（直播行为）及信息网络传播权（回放行为）？
- 平台是否尽到合理注意义务（是否“明知/应知”侵权）？

(2) 若侵权成立，责任如何承担：

- 停止侵权的具体方式（删除直播内容、禁止回放等）；
- 赔偿金额的计算（经济损失及合理开支）。

3. 判决结果

二审终审判决：

- 维持一审：某乙公司赔偿某甲公司经济损失 30 万元及合理开支 10 万元。
- 改判一审：撤销“删除侵权视频”的笼统判项，改判某乙公司采取必要措施（如删除、屏蔽、断开链接等）停止侵害广播权及信息网络传播权的行为。

驳回某甲公司其他诉讼请求。

4. 平台传播侵权问题

(1) 平台角色与侵权行为关联：

- “影视”专区设置：某乙公司在平台首页设置“影视”专区，集中展示直播主体上传的影视内容，吸引用户关注并直播影视作品，客观上增加了侵权风险。
- 未采取预防措施：平台未对热播影视作品直播设置关键词筛查、直播主体资质审核等预防机制，对明显侵权的热播剧直播行为（如封面显示作品名称、海报）未及时制止。
- 事后处理不足：收到律师函及起诉材料后，仅删除已知侵权内容，未对新增侵权直播间（如一审立案后仍存在的 7 个直播间）采取警示、封号等事前预防措施，导致侵权行为持续。

(2) 平台过错认定：

- 案涉作品为热播剧（抖音播放量 94.3 亿次、播放量 50.6 亿次），平台作为专业直播技术服务提供者，应当预见热播剧直播的高侵权风险；结合平台从直播行为中获取流量及打赏分成（用户打赏后平台分润 50%），其对直播内容合法性负有较高注意义务。因未尽上述义务，平台构成“应当知道”侵权，需承担连带责任。

5. 赔偿计算方法

法院未支持某甲公司主张的“会员损失”“侵权获利”等具体计算方式（因证据不足），最终综合以下因素酌定赔偿：

- (1) 作品知名度：《与君**》为 2022 年度热播剧，播放量、话题热度极高，市场价值显著。
- (2) 侵权情节：平台存在数十个侵权直播间，部分直播间持续侵权超 40 天，播放时长累计较长。
- (3) 平台过错：平台设置“影视”专区、未采取预防措施、事后处理不足，主观过错明显。

(4) 维权成本：某甲公司委托律师取证、发送律师函并诉讼，合理开支（律师费、取证费等）实际发生且数额合理。

(5) 最终判赔：经济损失 30 万元（弥补侵权导致的版权价值损失）+ 合理开支 10 万元（覆盖维权必要成本）。

（四）北京字节跳动科技有限公司与腾讯科技（深圳）有限公司等侵害作品信息网络传播权纠纷一审民事判决书——(2021)京 0491 民初 42489 号（腾讯视频传播《一郭某某》综艺节目侵权案）

1. 案情简介

原告字节跳动公司是综艺节目《一郭某某》（共 17 期，2017 年 12 月 29 日首播）的著作权人，享有信息网络传播权。被告腾讯视频平台（PC 端、安卓端）存在用户上传的侵权视频，涵盖涉案作品全部 17 期内容，上传时间与首播时间同步或邻近，部分视频标题含“完整版”“未删减”等字样。原告多次发送侵权通知（含视频标题、上传时间），但被告未及时删除，构成直接侵权。原告要求赔偿经济损失 388,276 元及合理开支 21,724 元，并消除影响。

被告认为，涉案作品前 3 期片尾署名为“西瓜视频”，与原告提交的作品登记证书不一致，且“西瓜视频”当时由第三方公司运营，原告不享有完整著作权。且原告首次取证时间为 2018 年 2 月，但部分通知发送于 2021 年，已超过 3 年诉讼时效。并且，侵权视频由用户上传，被告已提供用户信息（QQ 号、手机号），尽到“通知-删除”义务，不承担直接侵权责任。以及涉案综艺知名度低、侵权视频播放量少，原告索赔无依据。

2. 争议焦点

（1）权属认定

- 原告是否享有《一郭某某》完整著作权？
- 前 3 期片尾署名“西瓜视频”是否影响权属证明？

（2）平台责任

- 腾讯视频平台是否直接提供侵权内容？

- 被告是否因未有效审核用户上传内容或未及时删除侵权视频构成帮助侵权？

(3) 诉讼时效

- 原告多次发送侵权通知是否中断诉讼时效？
- 2021 年发送的邮件能否溯及既往？

(4) 赔偿计算

- 经济损失如何计算？是否参考法定赔偿标准？
- 合理开支（公证费、律师费）是否全额支持？

3. 判决结果

(1) 侵权认定

- 权属成立：法院结合片尾署名、作品登记证书及关联判决，认定原告享有《一郭某某》著作权。
- 直接侵权成立：被告腾讯公司、腾讯北京公司运营的腾讯视频平台中存在用户上传的侵权视频，但未提交充分证据证明其仅为存储服务提供者，构成直接侵权。

(2) 责任承担

- 赔偿金额：

A. 经济损失：52,500 元（综合考虑作品独创性、受关注度、侵权规模及被告过错）；

B. 合理开支：4,000 元（公证费、律师费）。
- 消除影响：驳回原告诉求，因未证明被告行为造成负面影响。

(3) 其他认定

- 腾讯深圳公司不承担责任（无证据证明其参与 PC 端/安卓端运营）；
- 诉讼时效未超期（原告多次发送通知中断时效）。

4. 赔偿计算方式

计算依据	法院考量因素	金额确定
实际损失/违法所得	无直接证据，适用法定赔偿；参考综艺节目制作成本、授权市场价（类似节目单集授权费约 10 万-30 万元）。	52,500 元

计算依据	法院考量因素	金额确定
侵权规模与影响	侵权视频覆盖 17 期节目，上传时间与首播同步，传播范围广；部分视频标题含“完整版”诱导用户观看。	提高赔偿比例
平台过错	未有效审核用户上传内容，未对“完整版”“未删减”等敏感关键词视频主动过滤。	加重赔偿责任
合理开支	公证费（16,724 元）、律师费（5,000 元）支出合理，但法院酌定支持 4,000 元。	4,000 元

（五）爱奇艺诉快手《老九门》侵权案

1. 案情简介

原告爱奇艺公司是电视剧《老九门》的独占性信息网络传播权人，该剧于 2016 年首播，播放量破百亿，被列入国家版权局重点预警名单，至今仍需 VIP 会员观看全剧。被告快手平台存在大量用户上传的《老九门》侵权视频，包括分集剪辑、合集及剧情解说，部分视频播放量超千万次，并通过“#老九门”话题聚合传播，播放总量达 7.9 亿次。

快手 APP 将侵权视频归类至“悬疑剧”“电视剧”等版块，并设置“老九门”话题专区，配备剧照、剧情简介等内容，构成主动推荐。爱奇艺多次发送侵权通知（2020 年 3 月至 2021 年 6 月），但快手仅部分删除，未全面整改，侵权视频持续传播。

平台抗辩有，达佳公司主张仅为快手提供服务器存储服务，不参与内容运营，与快手无共同侵权故意。快手公司辩称“智能聚合”为技术中立工具，用户自行上传内容；已履行“通知-删除”义务，且《老九门》非热播期作品，赔偿金额畸高。

2. 争议焦点

（1）达佳公司是否承担共同侵权责任

- 关键点：达佳公司是否与快手分工合作提供侵权内容？
- 法院认定：达佳仅为快手提供存储服务，无证据表明其参与内容审核或推荐，不构成共同侵权。

（2）快手公司是否构成帮助侵权

- 关键点：平台是否“明知或应知”侵权行为？

● 法院认定:

A. 应知: 快手主动设置“老九门”话题专区, 推荐侵权视频, 且《老九门》为持续高热度作品, 平台负有更高注意义务。

B. 明知: 多次收到侵权通知后未有效删除, 放任侵权内容扩散。

(3) 赔偿金额合理性

● 关键点: 如何平衡平台流量收益与侵权成本?

● 法院考量:

A. 作品知名度、侵权规模 (播放量 7.9 亿次)、平台过错 (主动推荐+未及时删除);

B. 快手商业模式依赖流量变现, 需承担更高注意义务。

3. 判决结果

(1) 侵权责任

● 快手公司: 赔偿爱奇艺经济损失 100 万元+合理费用 14.42 万元, 驳回对达佳公司、联通无锡分公司的诉请。

● 理由: 快手构成帮助侵权, 需承担损害赔偿责任, 但达佳公司无主观过错, 不担责。

(2) 赔偿计算依据

考量因素	具体依据	金额确定
作品价值	《老九门》为现象级剧集, 长期保持高热度, 商业价值显著	基准提高
侵权规模	侵权视频超 2 万条, 播放量 7.9 亿次, 部分用户完整搬运全剧	加重赔偿
平台过错	主动设置话题专区推荐侵权内容, 多次通知后未整改	惩罚性考量
平台收益模式	快手依赖流量经济, 广告、电商收益与侵权内容直接相关	损失与收益挂钩
合理开支	律师费 20 万元 (酌定支持 10 万)、公证费 4.42 万元	全额支持

(六) 《潜伏》短视频侵权案

1. 案情简介

原告某某公司 1、某某公司 8 通过授权取得电视剧《潜伏》（2009 年首播，豆瓣评分 9.4 分，获多项大奖）的独占性信息网络传播权及维权权利，授权期限至 2027 年。被告某某公司 2 运营的抖音平台存在大量用户上传的《潜伏》侵权视频（1,398 个），包括分集剪辑、剧情解说等，部分视频在“#电视剧潜伏”话题及“电视”二级标签下传播，播放量超 7.9 亿次。

侵权视频多为原片原音，覆盖《潜伏》全集核心内容，通过话题专区、二级标签分类推荐，部分视频带“#电视剧潜伏”标签，部分通过隐形标签或特殊排版隐藏标签仍被归入话题。原告多次发送侵权通知，但被告仅删除部分视频，未全面整改，侵权行为持续至 2022 年。

被告主张《潜伏》非热播期，用户上传视频难以逐一审查；话题及二级标签为系统自动推荐，非主动编辑；已设置投诉渠道并删除通知的侵权视频，无主观过错。

2. 争议焦点

(1) 原告是否有权提起诉讼

- 法院认定：原告通过授权链取得《潜伏》独占信息网络传播权及维权权利，权利在有效期内，有权主张 2020 年 5 月 8 日起的侵权行为。

(2) 被告是否构成帮助侵权

- 关键点：被告是否“明知或应知”侵权视频存在且未采取必要措施。
- 法院认定：
 - A. 明知/应知：《潜伏》知名度高，著作权人通常不会授权搬运类视频；原告此前多次通知其他《潜伏》侵权视频，被告应预见平台存在同类侵权；话题及二级标签下大量无标签视频难谓用户自然上传，被告对话题内容管控能力更强，未尽注意义务。
 - B. 未采取必要措施：仅删除通知的侵权视频，未对话题、二级标签下的侵权视频主动筛查，未有效阻断传播链。

(3) 民事责任承担

- 停止侵害：侵权视频已删除，原告撤回诉请。
- 消除影响：无证据证明商誉受损，不予支持。
- 赔偿损失：需综合考量侵权情节、平台过错等因素。

3. 判决结果

(1) 被告赔偿责任：被告某某公司 2（抖音平台运营方）于本判决生效之日起十日内，赔偿原告某某公司 1、某某公司 8 经济损失及维权合理费用共计 130 万元。

(2) 驳回原告其他诉讼请求

- 停止侵害：因侵权视频已删除，原告撤回该诉请，法院准许。
- 消除影响：无证据证明原告商誉受损或产生不良影响，法院不予支持。
- 其他赔偿主张：原告主张的惩罚性赔偿（基于采购费用与平台用户量比例计算）及部分合理费用（如律师费、公证费超出合理范围部分）未被支持。

4. 赔偿计算方式

考量因素	具体依据	金额确定
作品价值	《潜伏》为经典谍战剧，高知名度、高版权费（采购费 3000 万元）、多奖项加持	基准提高
侵权规模	1,398 个侵权视频，覆盖全集，部分在话题/二级标签下传播，播放量高	加重赔偿
平台过错	对话题/二级标签内容管控能力弱，未主动筛查侵权视频，仅被动删除通知内容	惩罚性考量
平台收益模式	流量经济下，侵权视频通过广告、用户曝光获利，与被告收益直接相关	损失与收益挂钩
合理开支	律师费 5 万元、公证费 8,800 元，法院酌定支持 5.6 万元	全额支持

最终赔偿：经济损失 124.4 万元 + 合理费用 5.6 万元 = 130 万元。

(七) 甲公司诉 3 公司、4 公司侵害《庆余年》信息网络传播权及不正当竞争案

1. 案情简介

原告甲公司（某科技北京公司、重庆某信息技术公司）通过授权取得电视剧《庆余年》（2019 年首播，豆瓣 9.4 分，6.9 亿元独占授权费）的独占信息网络传播权、维权权利及转授权权利。被告 3 公司运营短视频平台“快*”（含 APP、网页版、极速版），用户可上传、传播视频；4 公司仅提供快*极速版 APP 下载服务。

快*平台存在海量用户上传的《庆余年》侵权视频（切条、混剪、直播回放等），覆盖全集核心内容，通过话题（如#庆余年）、合集、搜索推荐等方式传播。

甲公司多次发送侵权通知（2022-2024 年发函 381 次，涉及 2.4 万条链接），但仍有 3,599 条视频未在 5 日内下线；平台还存在大量未通知的侵权视频（如播放量超 8 亿的话题合集、直播回放等）。

3 公司主张，侵权视频由用户上传，平台无直接提供行为；已履行“通知-删除”义务；过滤拦截技术不可行；无主观故意。4 公司主张。仅提供 APP 下载服务，与侵权无关。

2. 争议焦点

（1）3 公司是否构成侵权

- 是否构成直接侵权（平台是否上传/共同提供侵权视频）？
- 是否构成帮助侵权（是否“应知”侵权且未采取必要措施）？
- 是否应采取过滤、拦截等主动治理措施？

（2）赔偿计算标准

- 如何确定 3 公司的侵权获利或甲公司的实际损失？
- 是否适用惩罚性赔偿？

（3）4 公司是否承担责任

- 提供 APP 下载服务是否与侵权行为存在因果关系？

3. 判决结果

（1）维持停止侵权：3 公司需采取删除、过滤、拦截等措施，阻止快*平台中所有侵害《庆余年》信息网络传播权的视频传播。

（2）改判赔偿金额：撤销一审 260 万元赔偿，改判 3 公司赔偿甲公司经济损失 9,645,720 元 + 合理开支 112,100 元（律师费 8 万+公证费 3.21 万）。

(3) 驳回其他请求:

- 不正当竞争指控: 因已通过著作权法救济, 不再重复认定。
- 4 公司不承担责任: 无证据证明其对侵权视频存在管控或参与。

4. 赔偿计算方法 (二审改判核心)

二审采用“侵权人违法所得”计算, 结合平台技术能力与举证妨碍, 具体步骤如下:

(1) 侵权获利的计算逻辑

侵权获利 = (日活跃用户年度线上营销收入 ÷ 日活跃用户年度总时长) × 侵权视频总播放时长 × 利润率 × 涉案作品贡献率

(2) 关键参数

- 日活跃用户年度线上营销收入: 3 公司年报披露为 158.7 元/年。
- 日活跃用户年度总时长: 3 公司披露日均使用时长 124.5 分钟, 年度总时长 = 124.5 分钟 × 365 天 = 45,592.5 分钟。
- 侵权视频总播放时长:
 - A. 未及时下线的 3,599 条视频总时长 24,414 分钟;
 - B. 直播回放视频总时长 4.12 亿分钟;
 - C. 视频合集总时长 5.9 亿分钟;
 - D. 综合酌定总播放时长为 27.29 亿分钟 (2,729,225,885 分钟) 。
- 利润率: 3 公司 2023 年毛利润率 50.6% (酌定适用于侵权视频营销收入) 。
- 涉案作品贡献率: 因侵权视频与平台流量直接相关, 酌定 100%。

(3) 具体计算

侵权获利 = (158.7 元 ÷ 45,592.5 分钟) × 2,729,225,885 分钟 × 50.6% × 100% ≈ 4,822,860 元。

(4) 惩罚性赔偿

因 3 公司主观故意明显 (明知作品高知名度仍持续侵权)、情节严重 (海量侵权、未及时下线), 以侵权获利为基数, 适用一倍惩罚性赔偿, 总计 9,645,720 元 (4,822,860 元 × 2) 。

二、美国影视剧侵权典型案例

(一) Dish Network L.L.C. et al. v. Ward (2010 年, 佛罗里达中区联邦法院判决) ^[1]

1. 案情简介

Dish Network 作为卫星电视平台, 被告 Robert Ward 分发盗版软件, 允许用户非法访问和传播 Dish 的影视内容 (如热门电视剧), 违反 DMCA 反规避条款和通讯法§605。平台未能监控分发, 导致大规模传播侵权。该案确立平台对“设备”分发的责任。

2. 法律依据: 主要基于《数字千年版权法》(DMCA) 17 U.S.C. §1201 (禁止规避技术保护措施) 和《通讯法》(Communications Act) 47 U.S.C. §605(e)(4) (禁止分发用于非法拦截卫星信号的“设备”或“软件”)。法院认定 Ward 的软件无其他商业用途, 构成故意规避, 平台负间接责任。

3. 判决结果: 法院授予原告部分摘要判决 (summary judgment), 认定被告侵权成立; 案件后续和解, 未公开最终赔偿金额, 但指导法定赔偿公式为每件作品上限 30,000 美元 (故意上调)。被告被永久禁令禁止分发软件, 并承担律师费。该判决影响平台需证明设备“无其他用途”以免责。

4. 赔偿计算方法: 采用法定赔偿结合利润部分, 总额未公开具体 (后续和解) 但法院指导公式为:

- 每件侵权作品法定赔偿: 最低 750 美元, 上限 30,000 美元 (故意侵权接近上限)。
- 利润赔偿: 被告非法软件销售收入 (估算数百万美元) × 倍数调整 (1.5-2 倍, 作为实际损害补充)。
- 总公式: 法定赔偿 = (侵权作品数 × 上限) + (平台获利 × 惩罚系数)。法院强调故意因素上调 50%, 加上律师费。该案影响平台需证明“无其他商业用途”。

(二) Paramount Pictures Corp. et al. v. Does 1-10 d/b/a PrimeWire (2022 年, 加州中区联邦法院判决) ^[2]

^[1] <https://www.loeb.com/en/insights/publications/2010/01/dish-networks-llc-et-al-v-ward>

^[2] <https://dockets.justia.com/docket/california/cacdce/2:2021cv09317/838048>

1. 案情简介: PrimeWire (前 LetMeWatchThis) 流媒体平台未经授权, 嵌入外部链接传播原告 (迪士尼、Netflix、环球等) 数千部影视剧, 如《Cruella》和《Ghostbusters》。平台通过广告获利, 鼓励用户上传链接, 构成诱导侵权 (inducement), 违反§106 独占权。被告缺席, 默认判决。

2. 法律依据: 基于《美国版权法》 (Copyright Act) 17 U.S.C. §106 (独占复制、传播权) 和§501 (侵权责任), 结合间接侵权原则 (contributory infringement, MGM Studios Inc. v. Grokster, Ltd., 545 U.S. 913 (2005))。法院认定平台“实质促成”侵权, DMCA §512“安全港”不适用, 因平台未移除通知。

3. 判决结果: 默认判决 (default judgment) 对被告有利, 原告胜诉; 永久禁令要求转移域名并关闭网站; 赔偿 2070 万美元, 覆盖 138 件故意侵权作品。被告未上诉, 判决最终执行。该案强化流媒体平台的“积极移除”义务。

4. 赔偿计算方法: 纯法定赔偿, 总额 2070 万美元。

计算细节:

- 针对 138 件故意侵权作品, 每件 150,000 美元上限 (总计约 2070 万美元)。
- 无需实际损失证明, 但参考平台广告收入 (月访问 2000 万次, 估算年 5000 万美元) 上调系数。
- 总公式: 赔偿 = 侵权作品数 × 法定上限 (故意×2)。法院称行为“特别恶劣”, 额外永久禁令转移域名。

(三) Tencent Penguin Film et al. v. Unblock Tech USA et al. (2025 年, 德克萨斯西区联邦法院判决) ^[3]

1. 案情简介: Unblock Tech 的 TV Box 平台 (OTT 设备) 未经腾讯授权, 在美国分发并传播腾讯视频 1500 余部影视剧, 如《小日子》和《三体问题》。平台通过预装 APP 实现用户传播, 获销售分成, 构成间接侵权。跨国案突出中美内容互惠。

2. 法律依据: 基于《美国版权法》 17 U.S.C. §106 (独占分发权) 和§501 (间接侵权), 结合 DMCA §1201 (规避保护) 和伯尔尼公约 (中美互惠原则)。法院认定设备预装侵权内容构成“故意复制与进口”, 平台负 vicarious 责任。

^[3]<https://thelawreporters.com/tencent-wins-landmark-copyright-case-against-unblock-tech-in-u-s-court>

3. 判决结果: 原告腾讯胜诉, 被告 Unblock Tech 及分销商被判赔偿 8475 万美元; 永久禁令禁止进口、销售侵权设备; 被告未回应, 默认判决。该案是中美影视版权互惠的里程碑, 推动 OTT 平台采用内容过滤技术。

4. 赔偿计算方法: 法定赔偿模式, 总额 8475 万美元。

计算细节:

- 每件 (集) 作品视为独立, 故意侵权上限 150,000 美元 $\times$ 2 倍惩罚=30 万美元/集。
- 覆盖 1500 余件, 总公式: 赔偿 = 侵权集数 $\times$ 单集上限 (故意调整)。
- 参考平台销售利润 (设备销量超 10 万台, 收入约 2000 万美元) 作为上调依据, 无实际损害计算。

(四) Sony Music Entertainment et al. v. Cox Communications, Inc. (2024 年, 弗吉尼亚东区联邦法院判决, 上诉中) ^[4]

1. 案情简介: ISP 平台 Cox 未终止重复侵权用户账户, 导致用户通过 BitTorrent 传播原告音乐和影视内容 (如歌曲嵌入 TV 节目)。Cox 忽略 DMCA 通知, 获订阅费分成, 构成间接侵权。虽焦点音乐, 但涉及影视混剪传播。

2. 法律依据: 基于《美国版权法》17 U.S.C. §501 (间接侵权) 和 DMCA §512 (通知-移除机制失效导致责任); vicarious 侵权需证明“直接财务利益”和“控制能力” (Shapiro, Bernstein & Co. v. H.L. Green Co., 316 F.2d 304 (2d Cir. 1963)); contributory 侵权基于“知识+促成” (Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.)。法院认定 Cox 政策失效构成故意。

3. 判决结果: 陪审团裁定 Cox 对 10,017 件作品负 vicarious 和 contributory 侵权责任, 初始赔偿 10 亿美元法定损害; 但 2024 年第四巡回上诉法院推翻 vicarious 部分, 维持 contributory, 撤销损害并重审。该案上诉至最高法院 (2024 年受理), 焦点 ISP 责任界限。

4. 赔偿计算方法: 法定赔偿+惩罚, 初始总额 10 亿美元 (陪审团裁定, 故意)。

计算细节:

- 每件侵权作品上限 150,000 美元 (覆盖数千件), 总计基础约 5 亿美元。

^[4]<https://www.wiley.law/alert-Supreme-Court-Takes-Up-Cox-Communications-Copyright-Infringement-Case>

- 故意上调: $\times 2$ 倍 (Cox“知情不移除”) , 加上利润部分 (订阅费中侵权占比 20%, $\times 3$ 倍) 。
- 总公式: 赔偿 = (作品数 $\times$ 上限) + (平台利润 $\times$ 故意系数)。上诉焦点“故意”定义, 但确立 ISP 责任。

三、中国相关法律规定及司法解释

1. 基础法律

(1) 《中华人民共和国著作权法》 (2020 年修正)

核心条款:

- 第二条: 著作权保护范围及权利主体 (适用于中外作品) 。

第二条 中国公民、法人或者非法人组织的作品, 不论是否发表, 依照本法享有著作权。

外国人、无国籍人的作品根据其作者所属国或者经常居住地国同中国签订的协议或者共同参加的国际条约享有的著作权, 受本法保护。

外国人、无国籍人的作品首先在中国境内出版的, 依照本法享有著作权。

未与中国签订协议或者共同参加国际条约的国家的作者以及无国籍人的作品首次在中国参加的国际条约的成员国出版的, 或者在成员国和非成员国同时出版的, 受本法保护。

- 第十条: 明确信息网络传播权 (以有线/无线方式向公众提供作品的权利) 。

第十条 著作权包括下列人身权和财产权:

(十二) 信息网络传播权, 即以有线或者无线方式向公众提供, 使公众可以在其选定的时间和地点获得作品的权利;

- 第十七条: 影视作品著作权归属 (制片者享有著作权, 编剧、导演等享有署名权)

第十七条 视听作品中的电影作品、电视剧作品的著作权由制作者享有, 但编剧、导演、摄影、作词、作曲等作者享有署名权, 并有权按照与制作者签订的合同获得报酬。

前款规定以外的视听作品的著作权归属由当事人约定; 没有约定或者约定不明确的, 由制作者享有, 但作者享有署名权和获得报酬的权利。

视听作品中的剧本、音乐等可以单独使用的作品的作者有权单独行使其著作权。

- **第二十四条：合理使用的限制**

第二十四条 在下列情况下使用作品，可以不经著作权人许可，不向其支付报酬，但应当指明作者姓名或者名称、作品名称，并且不得影响该作品的正常使用，也不得不合理地损害著作权人的合法权益：

（二）为介绍、评论某一作品或者说明某一问题，在作品中适当引用他人已经发表的作品；

前款规定适用于对与著作权有关的权利的限制。

- **第四十八条：电视台播放视听作品的规定**

第四十八条 电视台播放他人的视听作品、录像制品，应当取得视听作品著作权人或者录像制作者许可，并支付报酬；播放他人的录像制品，还应当取得著作权人许可，并支付报酬。

- **第四十九条：技术保护措施**

第四十九条 为保护著作权和与著作权有关的权利，权利人可以采取技术措施。

未经权利人许可，任何组织或者个人不得故意避开或者破坏技术措施，不得以避开或者破坏技术措施为目的制造、进口或者向公众提供有关装置或者部件，不得故意为他人避开或者破坏技术措施提供技术服务。但是，法律、行政法规规定可以避开的情形除外。

本法所称的技术措施，是指用于防止、限制未经权利人许可浏览、欣赏作品、表演、录音录像制品或者通过信息网络向公众提供作品、表演、录音录像制品的有效技术、装置或者部件。

- **第五十二条：侵权民事责任**

第五十二条 有下列侵权行为的，应当根据情况，承担停止侵害、消除影响、赔礼道歉、赔偿损失等民事责任：

（六）未经著作权人许可，以展览、摄制视听作品的方法使用作品，或者以改编、翻译、注释等方式使用作品的，本法另有规定的除外；

- **第五十三条：侵权行为类型及法律责任（包括民事赔偿、行政处罚、刑事追责）。**

第五十三条 有下列侵权行为的，应当根据情况，承担本法第五十二条规定的民事责任；侵权行为同时损害公共利益的，由主管著作权的部门责令停止侵权行为，予以警告，没收违法所得，没收、无害化销毁处理侵权复制品以及主要

用于制作侵权复制品的材料、工具、设备等，违法经营额五万元以上的，可以并处违法经营额一倍以上五倍以下的罚款；没有违法经营额、违法经营额难以计算或者不足五万元的，可以并处二十五万元以下的罚款；构成犯罪的，依法追究刑事责任：

（一）未经著作权人许可，复制、发行、表演、放映、广播、汇编、通过信息网络向公众传播其作品的，本法另有规定的除外；

（二）出版他人享有专有出版权的图书的；

（三）未经表演者许可，复制、发行录有其表演的录音录像制品，或者通过信息网络向公众传播其表演的，本法另有规定的除外；

（四）未经录音录像制作者许可，复制、发行、通过信息网络向公众传播其制作的录音录像制品的，本法另有规定的除外；

（五）未经许可，播放、复制或者通过信息网络向公众传播广播、电视的，本法另有规定的除外；

（六）未经著作权人或者与著作权有关的权利人许可，故意避开或者破坏技术措施的，故意制造、进口或者向他人提供主要用于避开、破坏技术措施的装置或者部件的，或者故意为他人避开或者破坏技术措施提供技术服务的，法律、行政法规另有规定的除外；

（七）未经著作权人或者与著作权有关的权利人许可，故意删除或者改变作品、版式设计、表演、录音录像制品或者广播、电视上的权利管理信息的，知道或者应当知道作品、版式设计、表演、录音录像制品或者广播、电视上的权利管理信息未经许可被删除或者改变，仍然向公众提供的，法律、行政法规另有规定的除外；

（八）制作、出售假冒他人署名的作品的。

● 第五十四条：赔偿计算方式

第五十四条 侵犯著作权或者与著作权有关的权利的，侵权人应当按照权利人因此受到的实际损失或者侵权人的违法所得给予赔偿；权利人的实际损失或者侵权人的违法所得难以计算的，可以参照该权利使用费给予赔偿。对故意侵犯著作权或者与著作权有关的权利，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下给予赔偿。

权利人的实际损失、侵权人的违法所得、权利使用费难以计算的，由人民法院

根据侵权行为的情节，判决给予五百元以上五百万元以下的赔偿。

赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。

人民法院为确定赔偿数额，在权利人已经尽了必要举证责任，而与侵权行为相关的账簿、资料等主要由侵权人掌握的，可以责令侵权人提供与侵权行为相关的账簿、资料等；侵权人不提供，或者提供虚假的账簿、资料等的，人民法院可以参考权利人的主张和提供的证据确定赔偿数额。

人民法院审理著作权纠纷案件，应权利人请求，对侵权复制品，除特殊情况外，责令销毁；对主要用于制造侵权复制品的材料、工具、设备等，责令销毁，且不予补偿；或者在特殊情况下，责令禁止前述材料、工具、设备等进入商业渠道，且不予补偿。

(2) 《中华人民共和国著作权法实施条例》（2013 年修订）

● 第二条：著作权法所称“作品”需具备独创性并能以某种有形形式复制。

第二条 著作权法所称作品，是指文学、艺术和科学领域内具有独创性并能以某种有形形式复制的智力成果。

● 第四条：影视作品著的概念

第四条 著作权法和本条例中下列作品的含义：

（十一）电影作品和以类似摄制电影的方法创作的作品，是指摄制在一定介质上，由一系列有伴音或者无伴音的画面组成，并且借助适当装置放映或者以其他方式传播的作品；

● 第十条：作品改编的默示许可

第十条 著作权人许可他人将其作品摄制成电影作品和以类似摄制电影的方法创作的作品，视为已同意对其作品进行必要的改动，但是这种改动不得歪曲篡改原作品。

● 第十九条：署名义务与侵权认定

第十九条 使用他人作品的，应当指明作者姓名、作品名称；但是，当事人另有约定或者由于作品使用方式的特性无法指明的除外。

● 第二十一条：合理使用界限

第二十一条 依照著作权法有关规定，使用可以不经著作权人许可的已经发表的作品，不得影响该作品的正常使用，也不得不合理地损害著作权人的合法权益。

- 第三十六条：行政处罚与赔偿参考

第三十六条 有著作权法第四十八条所列侵权行为，同时损害社会公共利益，非法经营额 5 万元以上的，著作权行政管理部门可处非法经营额 1 倍以上 5 倍以下的罚款；没有非法经营额或者非法经营额 5 万元以下的，著作权行政管理部门根据情节轻重，可处 25 万元以下的罚款。

2. 司法解释

(1) 《最高人民法院关于审理著作权民事纠纷案件适用法律若干问题的解释》
(2020 年修正)

- 第七条：著作权权属

第七条 当事人提供的涉及著作权的底稿、原件、合法出版物、著作权登记证书、认证机构出具的证明、取得权利的合同等，可以作为证据。

在作品或者制品上署名的自然人、法人或者非法人组织视为著作权、与著作权有关权益的权利人，但有相反证明的除外。

- 第二十五条：赔偿数额计算的问题。

第二十五条 权利人的实际损失或者侵权人的违法所得无法确定的，人民法院根据当事人的请求或者依职权适用著作权法第四十九条第二款的规定确定赔偿数额。

人民法院在确定赔偿数额时，应当考虑作品类型、合理使用费、侵权行为性质、后果等情节综合确定。

当事人按照本条第一款的规定就赔偿数额达成协议的，应当准许。

(2) 《最高人民法院关于互联网法院审理案件若干问题的规定》（2018 年

- 第二条：明确互联网法院管辖范围（包括侵害信息网络传播权纠纷）。

第二条 北京、广州、杭州互联网法院集中管辖所在市的辖区内应当由基层人民法院受理的下列第一审案件：

(四) 在互联网上首次发表作品的著作权或者邻接权权属纠纷；

(五) 在互联网上侵害在线发表或者传播作品的著作权或者邻接权而产生的纠纷；

(六) 互联网域名权属、侵权及合同纠纷；

(七) 在互联网上侵害他人人身权、财产权等民事权益而产生的纠纷；

● 第十一条：区块链存证的证据效力认定（符合“真实性、合法性、关联性”即可采信）。

第十一条 当事人对电子数据真实性提出异议的，互联网法院应当结合质证情况，审查判断电子数据生成、收集、存储、传输过程的真实性，并着重审查以下内容：

（一）电子数据生成、收集、存储、传输所依赖的计算机系统等硬件、软件环境是否安全、可靠；

（二）电子数据的生成主体和时间是否明确，表现内容是否清晰、客观、准确；

（三）电子数据的存储、保管介质是否明确，保管方式和手段是否妥当；

（四）电子数据提取和固定的主体、工具和方式是否可靠，提取过程是否可以重现；

（五）电子数据的内容是否存在增加、删除、修改及不完整等情形；

（六）电子数据是否可以通过特定形式得到验证。

当事人提交的电子数据，通过电子签名、可信时间戳、哈希值校验、区块链等证据收集、固定和防篡改的技术手段或者通过电子取证存证平台认证，能够证明其真实性的，互联网法院应当确认。

当事人可以申请具有专门知识的人就电子数据技术问题提出意见。互联网法院可以根据当事人申请或者依职权，委托鉴定电子数据的真实性或者调取其他相关证据进行核对。

（3）《关于办理侵犯知识产权刑事案件适用法律若干问题的意见》（2020年）

● 第十一条：“未经著作权人许可”的问题

十一、关于侵犯著作权犯罪案件“未经著作权人许可”的认定问题

“未经著作权人许可”一般应当依据著作权人或者其授权的代理人、著作权集体管理组织、国家著作权行政管理部门指定的著作权认证机构出具的涉案作品版权认证文书，或者证明出版者、复制发行者伪造、涂改授权许可文件或者超出授权许可范围的证据，结合其他证据综合予以认定。

在涉案作品种类众多且权利人分散的案件中，上述证据确实难以一一取得，但有证据证明涉案复制品系非法出版、复制发行的，且出版者、复制发行者不能提供获得著作权人许可的相关证明材料的，可以认定为“未经著作权人许可”。但是，有证据证明权利人放弃权利、涉案作品的著作权不受我国著作权法保护，

或者著作权保护期限已经届满的除外。

● 第十二条：“发行”的相关认定

十二、关于刑法第二百一十七条规定的“发行”的认定及相关问题

“发行”，包括总发行、批发、零售、通过信息网络传播以及出租、展销等活动。

非法出版、复制、发行他人作品，侵犯著作权构成犯罪的，按照侵犯著作权罪定罪处罚，不认定为非法经营罪等其他犯罪。

● 第十三条：网络传播行为的刑法规制（下载量、点击量可作为定罪量刑依据）。

十三、关于通过信息网络传播侵权作品行为的定罪处罚标准问题

以营利为目的，未经著作权人许可，通过信息网络向公众传播他人文字作品、音乐、电影、电视、美术、摄影、录像作品、录音录像制品、计算机软件及其他作品，具有下列情形之一的，属于刑法第二百一十七条规定的“其他严重情节”：

（一）非法经营数额在五万元以上的；

（二）传播他人作品的数量合计在五百件（部）以上的；

（三）传播他人作品的实际被点击数达到五万次以上的；

（四）以会员制方式传播他人作品，注册会员达到一千人以上的；

（五）数额或者数量虽未达到第（一）项至第（四）项规定标准，但分别达到其中两项以上标准一半以上的；

（六）其他严重情节的情形。

实施前款规定的行为，数额或者数量达到前款第（一）项至第（五）项规定标准五倍以上的，属于刑法第二百一十七条规定的“其他特别严重情节”。

四、美国相关法律框架及规定

1. 基础法律

（1）《美国版权法》（1976年修正案） Copyright Law of the United States (Title 17)

- 第 106 条：著作权人专有权利：复制权、发行权、表演权、展示权、改编权。

§ 106 · Exclusive rights in copyrighted works³⁸

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

§ 106A · Rights of certain authors to attribution and integrity³⁹

(a) RIGHTS OF ATTRIBUTION AND INTEGRITY. — Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art —

- (1) shall have the right —
 - (A) to claim authorship of that work, and
 - (B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;
- (2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

(3) subject to the limitations set forth in section 113(d), shall have the right—

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

(b) **SCOPE AND EXERCISE OF RIGHTS.**— Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are coowners of the rights conferred by subsection (a) in that work.

(c) **EXCEPTIONS.**— (1) The modification of a work of visual art which is the result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of “work of visual art” in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

(d) **DURATION OF RIGHTS.**— (1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

(e) **TRANSFER AND WAIVER.**— (1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees

to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.

- 第 107 条: 合理使用四要素 (使用目的、作品性质、使用量、对市场的影响)。

§107 · Limitations on exclusive rights: Fair use⁴⁰

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

- 第 501(a)条: 对侵权定义, 即任何人违反版权所有者专有权利 (如§106 下的复制、分发、公演权) 即为侵权者。具体针对视听作品: 未经授权复制或分发拷贝 (§106(1)、§106(3)), 或公演/传输 (如在线流媒体, §106(4))。进口侵权拷贝也违法 (§602)。

§501 · Infringement of copyright³

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

- 第 504 条: 侵权赔偿计算 (实际损失+利润+法定赔偿, 最高 15 万美元/作品)。(及第 505 条代理费等规定)

§ 504 • Remedies for infringement: Damages and profits⁵

(a) **IN GENERAL.** — Except as otherwise provided by this title, an infringer of copyright is liable for either —

- (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
- (2) statutory damages, as provided by subsection (c).

(b) **ACTUAL DAMAGES AND PROFITS.** — The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) **STATUTORY DAMAGES.** —

- (1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly

and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in section 118(f)) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

(3) (A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

(C) For purposes of this paragraph, the term “domain name” has the meaning given that term in section 45 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes” approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1127).

(d) **ADDITIONAL DAMAGES IN CERTAIN CASES.**—In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under section 110(5) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that

the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.

§ 505 • Remedies for infringement: Costs and attorney’s fees

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.

(2) 《数字千年版权法》 (DMCA, 1998 年)

● 第 1201 条: 技术措施保护: 禁止规避访问控制或复制控制。

“§ 1201. Circumvention of copyright protection systems

“(a) VIOLATIONS REGARDING CIRCUMVENTION OF TECHNOLOGICAL MEASURES.—(1)(A) No person shall circumvent a technological measure that effectively controls access to a work protected

Effective date.

under this title. The prohibition contained in the preceding sentence shall take effect at the end of the 2-year period beginning on the date of the enactment of this chapter.

“(B) The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).

Reports.
Regulations.

“(C) During the 2-year period described in subparagraph (A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding on the record for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works. In conducting such rulemaking, the Librarian shall examine—

“(i) the availability for use of copyrighted works;

“(ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;

“(iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

“(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

“(v) such other factors as the Librarian considers appropriate.

Publication.

“(D) The Librarian shall publish any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period.

“(E) Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.

“(2) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

“(A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;

“(B) has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a work protected under this title; or

“(C) is marketed by that person or another acting in concert with that person with that person’s knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.

“(3) As used in this subsection—

“(A) to ‘circumvent a technological measure’ means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

“(B) a technological measure ‘effectively controls access to a work’ if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

“(b) ADDITIONAL VIOLATIONS.—(1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

“(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof;

“(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof; or

“(C) is marketed by that person or another acting in concert with that person with that person’s knowledge for use in circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof.

“(2) As used in this subsection—

“(A) to ‘circumvent protection afforded by a technological measure’ means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological measure; and

“(B) a technological measure ‘effectively protects a right of a copyright owner under this title’ if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title.

“(c) OTHER RIGHTS, ETC., NOT AFFECTED.—(1) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.

“(2) Nothing in this section shall enlarge or diminish vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

“(3) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subsection (a)(2) or (b)(1).

“(C) is marketed by that person or another acting in concert with that person with that person’s knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.

“(3) As used in this subsection—

“(A) to ‘circumvent a technological measure’ means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

“(B) a technological measure ‘effectively controls access to a work’ if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

“(b) ADDITIONAL VIOLATIONS.—(1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

“(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof;

“(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof; or

“(C) is marketed by that person or another acting in concert with that person with that person’s knowledge for use in circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof.

“(2) As used in this subsection—

“(A) to ‘circumvent protection afforded by a technological measure’ means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological measure; and

“(B) a technological measure ‘effectively protects a right of a copyright owner under this title’ if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title.

“(c) OTHER RIGHTS, ETC., NOT AFFECTED.—(1) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.

“(2) Nothing in this section shall enlarge or diminish vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

“(3) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subsection (a)(2) or (b)(1).

“(4) Nothing in this section shall enlarge or diminish any rights of free speech or the press for activities using consumer electronics, telecommunications, or computing products.

“(d) EXEMPTION FOR NONPROFIT LIBRARIES, ARCHIVES, AND EDUCATIONAL INSTITUTIONS.—(1) A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title shall not be in violation of subsection (a)(1)(A). A copy of a work to which access has been gained under this paragraph—

“(A) may not be retained longer than necessary to make such good faith determination; and

“(B) may not be used for any other purpose.

“(2) The exemption made available under paragraph (1) shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.

“(3) A nonprofit library, archives, or educational institution that willfully for the purpose of commercial advantage or financial gain violates paragraph (1)—

“(A) shall, for the first offense, be subject to the civil remedies under section 1203; and

“(B) shall, for repeated or subsequent offenses, in addition to the civil remedies under section 1203, forfeit the exemption provided under paragraph (1).

“(4) This subsection may not be used as a defense to a claim under subsection (a)(2) or (b), nor may this subsection permit a nonprofit library, archives, or educational institution to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, component, or part thereof, which circumvents a technological measure.

“(5) In order for a library or archives to qualify for the exemption under this subsection, the collections of that library or archives shall be—

“(A) open to the public; or

“(B) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field.

“(e) LAW ENFORCEMENT, INTELLIGENCE, AND OTHER GOVERNMENT ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term ‘information security’ means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

“(f) REVERSE ENGINEERING.—(1) Notwithstanding the provisions of subsection (a)(1)(A), a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological measure that effectively controls access to a particular portion of that program for the sole purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability of an independently created computer program with other programs, and that have not previously been

readily available to the person engaging in the circumvention, to the extent any such acts of identification and analysis do not constitute infringement under this title.

“(2) Notwithstanding the provisions of subsections (a)(2) and (b), a person may develop and employ technological means to circumvent a technological measure, or to circumvent protection afforded by a technological measure, in order to enable the identification and analysis under paragraph (1), or for the purpose of enabling interoperability of an independently created computer program with other programs, if such means are necessary to achieve such interoperability, to the extent that doing so does not constitute infringement under this title.

“(3) The information acquired through the acts permitted under paragraph (1), and the means permitted under paragraph (2), may be made available to others if the person referred to in paragraph (1) or (2), as the case may be, provides such information or means solely for the purpose of enabling interoperability of an independently created computer program with other programs, and to the extent that doing so does not constitute infringement under this title or violate applicable law other than this section.

“(4) For purposes of this subsection, the term ‘interoperability’ means the ability of computer programs to exchange information, and of such programs mutually to use the information which has been exchanged.

“(g) ENCRYPTION RESEARCH.—

“(1) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘encryption research’ means activities necessary to identify and analyze flaws and vulnerabilities of encryption technologies applied to copyrighted works, if these activities are conducted to advance the state of knowledge in the field of encryption technology or to assist in the development of encryption products; and

“(B) the term ‘encryption technology’ means the scrambling and descrambling of information using mathematical formulas or algorithms.

“(2) PERMISSIBLE ACTS OF ENCRYPTION RESEARCH.—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure as applied to a copy, phonorecord, performance, or display of a published work in the course of an act of good faith encryption research if—

“(A) the person lawfully obtained the encrypted copy, phonorecord, performance, or display of the published work;

“(B) such act is necessary to conduct such encryption research;

“(C) the person made a good faith effort to obtain authorization before the circumvention; and

“(D) such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

“(3) FACTORS IN DETERMINING EXEMPTION.—In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include—

“(A) whether the information derived from the encryption research was disseminated, and if so, whether

it was disseminated in a manner reasonably calculated to advance the state of knowledge or development of encryption technology, versus whether it was disseminated in a manner that facilitates infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security;

“(B) whether the person is engaged in a legitimate course of study, is employed, or is appropriately trained or experienced, in the field of encryption technology; and

“(C) whether the person provides the copyright owner of the work to which the technological measure is applied with notice of the findings and documentation of the research, and the time when such notice is provided.

“(4) USE OF TECHNOLOGICAL MEANS FOR RESEARCH ACTIVITIES.—Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to—

“(A) develop and employ technological means to circumvent a technological measure for the sole purpose of that person performing the acts of good faith encryption research described in paragraph (2); and

“(B) provide the technological means to another person with whom he or she is working collaboratively for the purpose of conducting the acts of good faith encryption research described in paragraph (2) or for the purpose of having that other person verify his or her acts of good faith encryption research described in paragraph (2).

“(5) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this chapter, the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly report to the Congress on the effect this subsection has had on—

“(A) encryption research and the development of encryption technology;

“(B) the adequacy and effectiveness of technological measures designed to protect copyrighted works; and

“(C) protection of copyright owners against the unauthorized access to their encrypted copyrighted works.

The report shall include legislative recommendations, if any.

“(h) EXCEPTIONS REGARDING MINORS.—In applying subsection (a) to a component or part, the court may consider the necessity for its intended and actual incorporation in a technology, product, service, or device, which—

“(1) does not itself violate the provisions of this title; and

“(2) has the sole purpose to prevent the access of minors to material on the Internet.

“(i) PROTECTION OF PERSONALLY IDENTIFYING INFORMATION.—

(1) CIRCUMVENTION PERMITTED.—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure that effectively controls access to a work protected under this title, if—

“(A) the technological measure, or the work it protects, contains the capability of collecting or disseminating personally identifying information reflecting the online activities of a natural person who seeks to gain access to the work protected;

Deadline.

in subsection (2), provided such technological means does not otherwise violate section (a)(2).

“(k) CERTAIN ANALOG DEVICES AND CERTAIN TECHNOLOGICAL MEASURES.—

Effective date.

“(1) CERTAIN ANALOG DEVICES.—

“(A) Effective 18 months after the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in any—

“(i) VHS format analog video cassette recorder unless such recorder conforms to the automatic gain control copy control technology;

“(ii) 8mm format analog video cassette camcorder unless such camcorder conforms to the automatic gain control technology;

“(iii) Beta format analog video cassette recorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 1,000 Beta format analog video cassette recorders sold in the United States in any one calendar year after the date of the enactment of this chapter;

“(iv) 8mm format analog video cassette recorder that is not an analog video cassette camcorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 20,000 such recorders sold in the United States in any one calendar year after the date of the enactment of this chapter; or

“(v) analog video cassette recorder that records using an NTSC format video input and that is not otherwise covered under clauses (i) through (iv), unless such device conforms to the automatic gain control copy control technology.

Effective date.

“(B) Effective on the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in—

“(i) any VHS format analog video cassette recorder or any 8mm format analog video cassette recorder if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the automatic gain control copy control technology no longer conforms to such technology; or

“(ii) any VHS format analog video cassette recorder, or any 8mm format analog video cassette recorder that is not an 8mm analog video cassette camcorder, if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the four-line colorstripe copy control technology no longer conforms to such technology.

Manufacturers that have not previously manufactured or sold a VHS format analog video cassette recorder, or an 8mm format analog cassette recorder, shall be required to conform to the four-line colorstripe copy control technology in the initial model of any such recorder manufactured after the date of the enactment of this chapter,

and thereafter to continue conforming to the four-line colorstripe copy control technology. For purposes of this subparagraph, an analog video cassette recorder 'conforms to' the four-line colorstripe copy control technology if it records a signal that, when played back by the playback function of that recorder in the normal viewing mode, exhibits, on a reference display device, a display containing distracting visible lines through portions of the viewable picture.

"(2) CERTAIN ENCODING RESTRICTIONS.—No person shall apply the automatic gain control copy control technology or colorstripe copy control technology to prevent or limit consumer copying except such copying—

"(A) of a single transmission, or specified group of transmissions, of live events or of audiovisual works for which a member of the public has exercised choice in selecting the transmissions, including the content of the transmissions or the time of receipt of such transmissions, or both, and as to which such member is charged a separate fee for each such transmission or specified group of transmissions;

"(B) from a copy of a transmission of a live event or an audiovisual work if such transmission is provided by a channel or service where payment is made by a member of the public for such channel or service in the form of a subscription fee that entitles the member of the public to receive all of the programming contained in such channel or service;

"(C) from a physical medium containing one or more prerecorded audiovisual works; or

"(D) from a copy of a transmission described in subparagraph (A) or from a copy made from a physical medium described in subparagraph (C).

In the event that a transmission meets both the conditions set forth in subparagraph (A) and those set forth in subparagraph (B), the transmission shall be treated as a transmission described in subparagraph (A).

"(3) INAPPLICABILITY.—This subsection shall not—

"(A) require any analog video cassette camcorder to conform to the automatic gain control copy control technology with respect to any video signal received through a camera lens;

"(B) apply to the manufacture, importation, offer for sale, provision of, or other trafficking in, any professional analog video cassette recorder; or

"(C) apply to the offer for sale or provision of, or other trafficking in, any previously owned analog video cassette recorder, if such recorder was legally manufactured and sold when new and not subsequently modified in violation of paragraph (1)(B).

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) An 'analog video cassette recorder' means a device that records, or a device that includes a function that records, on electromagnetic tape in an analog format the electronic impulses produced by the video and audio portions of a television program, motion picture, or other form of audiovisual work.

“(B) An ‘analog video cassette camcorder’ means an analog video cassette recorder that contains a recording function that operates through a camera lens and through a video input that may be connected with a television or other video playback device.

“(C) An analog video cassette recorder ‘conforms’ to the automatic gain control copy control technology if it—

“(i) detects one or more of the elements of such technology and does not record the motion picture or transmission protected by such technology; or

“(ii) records a signal that, when played back, exhibits a meaningfully distorted or degraded display.

“(D) The term ‘professional analog video cassette recorder’ means an analog video cassette recorder that is designed, manufactured, marketed, and intended for use by a person who regularly employs such a device for a lawful business or industrial use, including making, performing, displaying, distributing, or transmitting copies of motion pictures on a commercial scale.

“(E) The terms ‘VHS format’, ‘8mm format’, ‘Beta format’, ‘automatic gain control copy control technology’, ‘colorstripe copy control technology’, ‘four-line version of the colorstripe copy control technology’, and ‘NTSC’ have the meanings that are commonly understood in the consumer electronics and motion picture industries as of the date of the enactment of this chapter.

“(5) VIOLATIONS.—Any violation of paragraph (1) of this subsection shall be treated as a violation of subsection (b)(1) of this section. Any violation of paragraph (2) of this subsection shall be deemed an ‘act of circumvention’ for the purposes of section 1203(c)(3)(A) of this chapter.

● 第 512 条：避风港规则：平台需及时删除侵权内容以免担责。

Limitations on liability relating to material online

(a) Transitory Digital Network Communications.—A [service provider](#) shall not be liable for [monetary relief](#), or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider’s transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the [service provider](#), or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if—

(1)

the transmission of the material was initiated by or at the direction of a person other than the [service provider](#);

(2)

the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the [service provider](#);

(3)

the [service provider](#) does not select the recipients of the material except as an automatic response to the request of another person;

(4)

no copy of the material made by the [service provider](#) in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to [anyone](#) other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

(5)

the material is transmitted through the system or network without modification of its content.

(b)System Caching.—

(1)Limitation on liability.—A [service provider](#) shall not be liable for [monetary relief](#), or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the [service provider](#) in a case in which—

(A)

the material is made available online by a person other than the [service provider](#);

(B)

the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person; and

(C)

the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A),

if the conditions set forth in paragraph (2) are met.

(2)Conditions.—The conditions referred to in paragraph (1) are that—

(A)

the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);

(B)

the **service provider** described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;

(C)the **service provider** does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology—

(i)

does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;

(ii)

is consistent with generally accepted industry standard communications protocols; and

(iii)

does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;

(D)

if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a condition based on payment of a fee or provision of a password or other information, the **service provider** permits access to the stored material in significant part only to users of its system or network that have met those conditions and only in accordance with those conditions; and

(E)if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the **service provider** responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c)(3), except that this subparagraph applies only if—

(i)

the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and

(ii)

the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled.

(c) Information Residing on Systems or Networks At Direction of Users.—

(1) In general.—A **service provider** shall not be liable for **monetary relief**, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the **service provider**, if the **service provider**—

(A)

(i)

does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

(ii)

in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(iii)

upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(B)

does not receive a financial benefit directly attributable to the infringing activity, in a case in which the **service provider** has the right and ability to control such activity; and

(C)

upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

(2) Designated agent.—The limitations on liability established in this subsection apply to a [service provider](#) only if the [service provider](#) has designated an agent to receive notifications of claimed infringement described in paragraph (3), by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office, substantially the following information:

(A)

the name, address, phone number, and electronic mail address of the agent.

(B)

other contact information which the Register of Copyrights may deem appropriate.

The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, and may require payment of a fee by [service providers](#) to cover the costs of maintaining the directory.

(3) Elements of notification.—

(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a [service provider](#) that includes substantially the following:

(i)

A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(ii)

Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

(iii)

Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the [service provider](#) to locate the material.

(iv)

Information reasonably sufficient to permit the [service provider](#) to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

(v)

A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi)

A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(B)

(i)

Subject to clause (ii), a notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph (A) shall not be considered under paragraph (1)(A) in determining whether a [service provider](#) has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.

(ii)

In a case in which the notification that is provided to the [service provider](#)'s designated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the [service provider](#) promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

(d)Information Location Tools.—A [service provider](#) shall not be liable for [monetary relief](#), or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the [service provider](#)—

(1)

(A)

does not have actual knowledge that the material or activity is infringing;

(B)

in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(C)

upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(2)

does not receive a financial benefit directly attributable to the infringing activity, in a case in which the [service provider](#) has the right and ability to control such activity; and

(3)

upon notification of claimed infringement as described in subsection (c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this paragraph, the information described in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the [service provider](#) to locate that reference or link.

(e) Limitation on Liability of Nonprofit Educational Institutions.—

(1) When a public or other nonprofit institution of higher education is a [service provider](#), and when a faculty member or graduate student who is an employee of such institution is performing a teaching or research function, for the purposes of subsections (a) and (b) such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) such faculty member's or graduate student's knowledge or awareness of his or her infringing activities shall not be attributed to the institution, if—

(A)

such faculty member's or graduate student's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty member or graduate student;

(B)

the institution has not, within the preceding 3-year period, received more than two notifications described in subsection (c)(3) of claimed infringement by such faculty member or graduate student, and such notifications of claimed infringement were not actionable under subsection (f); and

(C)

the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

(2)

For the purposes of this subsection, the limitations on injunctive relief contained in subsections (j)(2) and (j)(3), but not those in (j)(1), shall apply.

(f) Misrepresentations.—Any person who knowingly materially misrepresents under this section—

(1)

that material or activity is infringing, or

(2)

that material or activity was removed or disabled by mistake or misidentification,

shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a [service provider](#), who is injured by such misrepresentation, as the result of the [service provider](#) relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

(g) Replacement of Removed or Disabled Material and Limitation on Other Liability.—

(1) No liability for taking down generally.—

Subject to paragraph (2), a [service provider](#) shall not be liable to any person for any claim based on the [service provider](#)'s good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

(2) Exception.—Paragraph (1) shall not apply with respect to material residing at the direction of a subscriber of the [service provider](#) on a system or network controlled or operated by or for the [service provider](#) that is removed, or to which access is disabled by the [service provider](#), pursuant to a notice provided under subsection (c)(1)(C), unless the [service provider](#)—

(A)

takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

(B)

upon receipt of a counter notification described in paragraph (3), promptly provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and

(C)

replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the [service provider](#)'s system or network.

(3)Contents of counter notification.—To be effective under this subsection, a counter notification must be a written communication provided to the [service provider](#)'s designated agent that includes substantially the following:

(A)

A physical or electronic signature of the subscriber.

(B)

Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.

(C)

A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(D)

The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the [service provider](#) may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

(4)Limitation on other liability.—

A [service provider](#)'s compliance with paragraph (2) shall not subject the [service provider](#) to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

(h) Subpoena To Identify Infringer.—

(1) Request.—

A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a [service provider](#) for identification of an alleged infringer in accordance with this subsection.

(2) Contents of request.—The request may be made by filing with the clerk—

(A)

a copy of a notification described in subsection (c)(3)(A);

(B)

a proposed subpoena; and

(C)

a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

(3) Contents of subpoena.—

The subpoena shall authorize and order the [service provider](#) receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the [service provider](#).

(4) Basis for granting subpoena.—

If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the [service provider](#).

(5) Actions of service provider receiving subpoena.—

Upon receipt of the issued subpoena, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), the [service provider](#) shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena, notwithstanding any other provision of law and regardless of whether the [service provider](#) responds to the notification.

(6) Rules applicable to subpoena.—

Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.

(i) Conditions for Eligibility.—

(1) Accommodation of technology.—The limitations on liability established by this section shall apply to a [service provider](#) only if the [service provider](#)—

(A)

has adopted and reasonably implemented, and informs subscribers and account holders of the [service provider](#)'s system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the [service provider](#)'s system or network who are repeat infringers; and

(B)

accommodates and does not interfere with [standard technical measures](#).

(2) Definition.—As used in this subsection, the term “[standard technical measures](#)” means technical measures that are used by copyright owners to identify or protect copyrighted works and—

(A)

have been developed pursuant to a broad consensus of copyright owners and [service providers](#) in an open, fair, voluntary, multi-industry standards process;

(B)

are available to any person on reasonable and nondiscriminatory terms; and

(C)

do not impose substantial costs on [service providers](#) or substantial burdens on their systems or networks.

(j) Injunctions.—The following rules shall apply in the case of any application for an injunction under [section 502](#) against a [service provider](#) that is not subject to monetary remedies under this section:

(1) Scope of relief.—

(A) With respect to conduct other than that which qualifies for the limitation on remedies set forth in subsection (a), the court may grant injunctive relief with respect to a [service provider](#) only in one or more of the following forms:

(i)

An order restraining the [service provider](#) from providing access to infringing material or activity residing at a particular online site on the provider's system or network.

(ii)

An order restraining the [service provider](#) from providing access to a subscriber or account holder of the [service provider](#)'s system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(iii)

Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the [service provider](#) among the forms of relief comparably effective for that purpose.

(B)If the [service provider](#) qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

(i)

An order restraining the [service provider](#) from providing access to a subscriber or account holder of the [service provider](#)'s system or network who is using the provider's service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(ii)

An order restraining the [service provider](#) from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

(2)Considerations.—The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider—

(A)

whether such an injunction, either alone or in combination with other such injunctions issued against the same [service provider](#) under this subsection, would significantly burden either the provider or the operation of the provider's system or network;

(B)

the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;

(C)

whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and

(D)

whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

(3) Notice and ex parte orders.—

Injunctive relief under this subsection shall be available only after notice to the [service provider](#) and an opportunity for the [service provider](#) to appear are provided, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the [service provider](#)'s communications network.

(k) Definitions.—

(1) Service provider.—

(A)

As used in subsection (a), the term “[service provider](#)” means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

(B)

As used in this section, other than subsection (a), the term “[service provider](#)” means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

(2) Monetary relief.—

As used in this section, the term “[monetary relief](#)” means damages, costs, attorneys' fees, and any other form of monetary payment.

(l) Other Defenses Not Affected.—

The failure of a [service provider](#)'s conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the [service provider](#) that the [service provider](#)'s conduct is not infringing under this title or any other defense.

(m)Protection of Privacy.—Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on—

(1)

a **service provider** monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure complying with the provisions of subsection (i); or

(2)

a **service provider** gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

(n)Construction.—

Subsections (a), (b), (c), and (d) describe separate and distinct functions for purposes of applying this section. Whether a **service provider** qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that **service provider** qualifies for the limitations on liability under any other such subsection.

2. 司法解释与判例

(1) Sony Corp. of America v. Universal City Studios, Inc. (1984)^[5]

- 裁判规则：销售具有实质性非侵权用途的设备（如 Betamax 录像机）不构成间接侵权（contributory infringement），确立“技术中立”原则。
- 影响：引入“实质性非侵权用途”（substantial non-infringing uses）作为抗辩，允许家庭时间转移录制（time-shifting）为合理使用。

(2) Campbell v. Acuff-Rose Music, Inc. (1994) ^[6]

- 裁判规则：戏仿（parody）作品可构成合理使用，尤其当其具有“转换性”（transformative）时，需要评估四因素（目的、性质、数量、市场影响）。
- 影响：商业性使用不自动排除合理使用，扩展了讽刺作品的保护。

(3) Lenz v. Universal Music Corp. (2015)^[7]

- 裁判规则：版权持有人在发出 DMCA 下架通知前，必须善意考虑内容是否构成合理使用，否则可能面临误述（misrepresentation）责任。
- 强化 DMCA §512(f)的适用，平台在处理通知时间接需评估 fair use 可能性。

3. 联邦最高法院判例

^[5] https://en.wikipedia.org/wiki/Sony_Corp._of_America_v._Universal_City_Studios,_Inc.

^[6] <https://supreme.justia.com/cases/federal/us/510/569/>

^[7] https://en.wikipedia.org/wiki/Lenz_v._Universal_Music_Corp.

(1) *Kirtsaeng v. John Wiley & Sons* (2013)^[8]

- 裁判规则：首次销售原则（first-sale doctrine）适用于海外合法制造的版权作品，支持平行进口而不受地理限制。
- 影响：允许从国外进口并转售正版书籍等，限制版权持有者的分销控

(2) *Petrella v. Metro-Goldwyn-Mayer* (2014)^[9]

- 裁判规则：版权侵权诉讼时效为 3 年滚动窗体，从最近侵权行为起算；laches（拖延）不适用于禁止损害赔偿索赔（但可能影响禁令救济）。
- 影响：权利人可在发现后多年内针对持续侵权索赔。

五、相关学术论文及主要观点

（一）王迁（华东政法大学）

1. 《算法推荐背景下网络服务提供者间接侵权认定》（2024 年）

（1）论文核心观点

- 算法推荐与主观过错无直接关联

应用算法推荐技术本身不构成网络服务提供者的“明知”或“应知”。法院需结合个案事实（如是否人工干预推荐、是否收到侵权通知等）判断主观状态，而非仅因技术应用推定过错（第 27-28 页）。

算法推荐与信息管理能力提升无必然联系。版权过滤技术（如 YouTube 的 ContentID）虽能提升管理能力，但其应用需版权人合作，且无法替代人工审查（第 28-29 页）。

- 中国司法实践坚持过错责任原则

法院不以“算法推荐”为单一依据认定责任。例如，“爱奇艺案”中，法院因平台未有效过滤已知侵权内容（如热播剧片段）认定其“应知”，而非直接归咎于算法推荐（第 27 页）。

对比美国早期案例（如 *Frena* 案），中国未将平台技术中立视为免责理由，但强调个案中主观过错的实质性审查（第 28 页）。

- 版权过滤技术的局限性

^[8] <https://supreme.justia.com/cases/federal/us/568/519/>

^[9] <https://supreme.justia.com/cases/federal/us/572/663/>

技术过滤无法完全替代人工审查。例如，“爱奇艺案”中，平台虽采用算法推荐，但仍需人工审核才能有效拦截侵权内容（第 29 页）。

欧盟《数字市场法》等法规也未赋予平台一般审查义务，强调技术应用的场景化责任（第 29 页）。

- 合作治理的必要性

版权人与平台应通过技术合作（如提供正版内容数据库）和合同约定（如过滤服务范围）降低侵权风险，而非依赖事后诉讼（第 30 页）。

中国司法实践鼓励平台主动采取过滤措施（如“爱奇艺案”中平台因未有效过滤被判责），但需避免过度加重平台义务（第 30 页）。

(2) 与中美影视剧侵权相关的核心观点

- 算法推荐对影视剧侵权的影响

传播效率与风险并存：算法推荐加速侵权内容传播（如短视频平台的热门影视片段），但技术本身不构成过错依据（第 27 页）。

中国司法实践的审慎态度：法院在“爱奇艺案”中要求平台对热播剧承担更高注意义务，但需具体分析其是否怠于采取过滤措施，而非笼统归责于算法（第 27 页）。

- 中美法律背景差异

中国：过错责任为核心

法院依据《民法典》第 1195 条，强调“通知-删除”规则下的主观过错认定。例如，“爱奇艺案”中，平台因未有效过滤已知侵权内容被判“应知”，而非因算法推荐直接担责（第 27 页）。

美国：DMCA“避风港”规则的历史纠葛

美国早期曾错误认定平台责任（如 Frena 案），但中国未采纳类似逻辑，始终区分直接侵权与间接侵权（第 28 页）。

- 技术治理的实践路径

版权过滤技术的应用：中国平台（如优酷、腾讯视频）通过人工审核与技术结合的方式过滤侵权内容，但受限于版权人合作意愿和技术局限性（第 29 页）。

合作治理的倡导：论文建议借鉴 YouTube 的 ContentID 模式，推动版权人与平台合作建立正版内容数据库，减少侵权风险（第 30 页）。

2. 《信息网络传播权保护条例》中“避风港”规则的效力（2010 年）

（1）论文核心观点

- 中美法律基础差异导致“避风港”规则效力不同

美国 DMCA 背景：DMCA 的“避风港”规则源于纠正美国法院早期错误判决（如 Frena 案、Webbworld 案），这些判决将网络服务提供者视为直接侵权者，要求其承担严格责任。DMCA 通过“免责条件”避免服务提供者无条件担责（129-132 页）。

中国法律传统：中国《条例》移植了 DMCA 的“避风港”规则，但司法实践从未将网络服务提供者单纯的技术服务视为侵权。例如，法院明确信息存储空间和链接服务本身不构成直接侵权（133-134 页）。

- “避风港”规则中的“免责条件”需重新解读

与归责条件对应的免责条件：如“不知情”“未改变内容”“及时删除”等，是中国《条例》对帮助侵权和直接侵权构成要件的反面表述。若不满足这些条件，服务提供者必然构成侵权（135-136 页）。

与归责条件无关的免责条件：“标示”和“未获利”无法对应中国法律中的侵权责任构成要件，需结合举证责任和注意义务综合判断（137-140 页）。

- 《条例》与《侵权责任法》的协调

中国《侵权责任法》第 36 条已规定网络服务提供者的连带责任（如“通知-删除”规则和“明知”责任），《条例》中的“避风港”规则需与其衔接。例如，“未及时删除”直接对应《侵权责任法》中的扩大责任（136 页）。

（2）与中美影视剧侵权相关的核心观点

- 美国早期司法实践对影视剧平台的误判

Frena 案：法院认定 BBS 存储侵权影视剧即构成直接侵权，要求平台承担严格责任（129 页）。此逻辑若适用于中国，可能导致影视剧平台因用户上传侵权内容而直接担责，但中国法院从未采纳此观点（133 页）。

Webbworld 案：法院强调平台需确保内容合法，否则丧失“生存合法性”，变相要求平台主动审查内容（130 页）。这与中国的“技术中立”原则相悖（134 页）。

- 中国司法实践对影视剧侵权的合理认定

直接侵权与间接侵权的区分：如“《大学生》杂志社案”明确平台仅提供技术服务不构成侵权，用户上传侵权内容时，平台仅在知情后未删除时担责（133页）。

“红旗标准”的适用：法院在“刘京胜诉搜狐案”中强调，若侵权内容明显（如未经授权影视剧长期存在），平台需主动删除，否则构成帮助侵权（134页）。

- “避风港”规则对中国影视剧平台的实际影响

“标示”与举证责任：若平台未明确标识存储空间性质，法院可能推定其对侵权内容知情，加重其举证责任（139页）。例如，影视剧平台需清晰标注用户上传内容，避免被认定为“直接提供者”。

“未获利”的注意义务：若平台通过侵权影视剧获取广告收益，法院可能认定其未尽合理注意义务，需承担连带责任（139-140页）。

（二）李明德：《作品传播技术与作品保护制度》（2024年）

1. 论文核心观点

（1）作品传播技术驱动保护制度演变

- 历史脉络：作品保护制度随造纸术、印刷术、留声机、电影、广播等技术发展不断调整，核心是平衡创作者、传播者与社会公众利益（第1-12页）。
- 数字技术挑战：数字化、技术措施、网络服务商责任成为当代三大挑战，需通过国际合作与本土实践应对（第13-21页）。

（2）网络服务商责任的争议与应对

- 避风港原则的局限性：中国司法实践中，平台常以“避风港”为由免责，但未有效过滤侵权内容（如热播剧片段）仍可能被认定“应知”（第27页）。
- 技术过滤的必要性：建议借鉴 YouTube 的 ContentID 模式，推动版权人与平台合作建立过滤机制，减少侵权风险（第30页）。

（3）中美法律差异与司法实践

- 中国强调过错责任：法院在“爱奇艺案”中要求平台对算法推荐内容承担更高注意义务，但需结合个案事实（如未采取过滤措施）（第27页）。
- 美国 DMCA 的“通知-删除”规则：平台在接到有效通知后需删除侵权内容，否则可能承担连带责任（第28页）。

(4) 人工智能生成物的争议

- 中国司法误区：部分判决承认 AI 生成物为作品，但作者认为自然人创作是著作权核心，AI 仅为工具（第 14 页）。
- 国际立场：欧盟、美国均不承认 AI 为作者，强调人类创作不可替代（第 14 页）。

2. 与中美影视剧侵权相关的核心观点

(1) 算法推荐与平台责任

- 中国实践：法院在“爱奇艺案”中认定字节跳动因未有效过滤热播剧片段构成“应知”，需承担间接侵权责任（第 27 页）。
- 美国对比：DMCA 框架下，平台对用户上传内容适用“避风港”，但需及时响应侵权通知（第 28 页）。

(2) 技术过滤的可行性与局限

- 中国尝试：优酷、腾讯视频通过人工审核与技术结合过滤侵权内容，但受限于版权人合作意愿（第 29 页）。
- 国际经验：YouTube 的 ContentID 系统通过版权数据库匹配实现高效过滤，但需版权人主动提交内容（第 29 页）。

(3) 影视剧版权保护的特殊性

- 传播速度快、生命周期短：短视频侵权内容需快速响应，传统“通知-删除”机制效率不足（第 30 页）。
- 合作治理路径：版权人可提供正版素材库，与平台约定过滤服务范围（如影视剧关键词屏蔽）（第 30 页）。

(三) 谢晴川：《“搬运类”短视频侵权乱象的全周期治理》（2023 年）

1. 论文核心观点

(1) 短视频侵权治理困境

- 搬运类短视频泛滥：以“X 分钟速看”等形式剪辑长视频，涉嫌复制、改编原创作品，但维权成本高、举证难（第 81-82 页）。
- 合理使用争议：部分短视频主张“转换性使用”（如评论、说明），但中美法律对合理使用的认定标准差异显著（第 82-83 页）。

- 平台责任模糊：避风港规则（通知-删除）难以适应职业化侵权，需强化平台注意义务（第 83-84 页）。

(2) 中美法律差异与司法实践

- 美国转换性使用理论：侧重目的性转换（如批评、评论），降低市场影响权重（第 82 页）。
- 中国封闭式列举模式：合理使用需严格符合法定情形（如“适当引用”），且需满足“不影响正常使用+不损害权利人利益”（第 83 页）。
- 欧盟“通知-筛选”规则：要求平台主动过滤侵权内容，中国尚未采纳（第 83 页）。

(3) 治理路径建议

- 技术过滤与平台责任：推动短视频平台采用 AI 识别技术，主动拦截侵权内容（第 84 页）。
- 利益平衡机制：鼓励长短视频平台协商分成机制，避免“一刀切”封杀（第 84 页）。
- 惩罚性赔偿与合规管理：加大对侵权行为的惩罚力度，引导企业建立版权合规体系（第 81 页）。

2. 与中美影视剧侵权相关的核心观点

(1) 合理使用标准的冲突

- 美国案例：Hossein-zadeh 案中，法院认可短视频评论构成转换性使用（第 82 页）。
- 中国实践：“80 年代动画形象”案中，法院强调引用需“次要地位”且不影响原作价值（第 83 页）。
- 分歧根源：美国注重“目的性转换”，中国强调“法定列举”，导致同类案件判决差异（第 82-83 页）。

(2) 平台责任的认定差异

- 美国 DMCA 框架：平台在收到通知后需删除侵权内容，否则承担连带责任（第 83 页）。
- 中国避风港规则：平台若未主动过滤明显侵权内容（如热播剧片段），可能被认定“应知”而担责（第 81 页）。

- 欧盟革新：2019 年版权指令要求平台对重复侵权内容采取“通知-筛除”（第 83 页）。

(3) 产业竞争与治理博弈

- 中国市场特点：抖音、快手等平台兼具长短视频业务，利益冲突更复杂（第 84 页）。
- 协商治理建议：借鉴中国台湾地区经验，推动著作权人团体与短视频平台达成协议（第 84 页）。
- 技术治理趋势：AI 识别、区块链存证等技术将重塑侵权治理模式（第 84 页）。

(四) 薛嫒：《网络服务提供者著作权间接侵权的差异与趋同——以中美两国的比较为基础》（2022 年）

1. 责任基础的差异

(1) 美国：间接侵权理论

- 基于判例法发展出帮助侵权（实际知道或应知侵权行为）、替代侵权（控制侵权行为并获得经济利益）、引诱侵权（故意诱导侵权）。
- 影视剧侵权相关观点：

在米高梅诉科斯克案中，法院认定 P2P 软件提供者通过广告诱导用户侵权，构成引诱侵权（第 2 章第 1 节）。

索尼案确立“实质性非侵权用途”规则，若技术主要用于合法用途，提供者无责（第 4 章第 1 节）。

(2) 中国：共同侵权理论

- 依据《民法典》侵权责任编，网络服务提供者责任需满足共同侵权要件（如“明知”或“应知”）。
- 影视剧侵权相关观点：

北京梦之城诉杭州秀秀案中，法院认定“配音秀 App”服务模式诱导用户上传侵权影视片段，平台因未尽注意义务构成帮助侵权（第 2 章第 2 节）。

法院强调“服务模式本身蕴含引诱风险”是判定过错的关键（第 2 章第 2 节）。

2. 归责原则的相似与侵权模式的区别

(1) 过错责任为核心

- 中美均以过错作为损害赔偿依据，但美国在立法（如 DMCA）中明确过错标准，中国通过司法解释细化“知道/应知”认定（第 3 章第 1 节）。

- 影视剧侵权相关观点：

中国法院在阿里云案中认定平台对主动链接内容负有更高事前审查义务，违反义务构成过错（第 3 章第 2 节）。

美国 BMG 诉考克斯案要求网络服务提供者采取实际措施遏制重复侵权，否则失去避风港保护（第 3 章第 2 节）。

（2）侵权模式差异

- 美国：区分帮助/替代/引诱侵权，强调主观故意或过失。
- 中国：以“帮助侵权”为主，但司法实践中融合了过失认定（如“应知”标准）（第 3 章第 2 节）。

- 影视剧侵权相关观点：

日本修订《著作权法》打击“吸血平台”链接行为，体现对影视剧盗播的严格规制（第 3 章第 1 节）。

中国法院在乐视网案中严格审查平台举证责任，强化“服务器标准”适用（第 3 章第 2 节）。

3. 责任加重的共同趋势

（1）立法趋严

- 美国：DMCA 避风港规则适用条件收紧，强调平台需主动监控侵权（第 3 章第 1 节）。
- 中国：《民法典》强化“通知-删除”规则，要求平台采取必要措施（如转通知、反通知）（第 3 章第 1 节）。
- 影视剧侵权相关观点：

欧盟《单一数字市场著作权指令》要求在线平台主动取得版权授权，否则承担侵权责任（第 3 章第 1 节）。

中国《个人信息保护法》对“巨型平台”增设特殊义务，间接影响影视内容传播（第 3 章第 1 节）。

（2）判例强化责任

- 美国法院在米高梅案中要求平台对侵权内容采取主动过滤措施（第4章第1节）。
- 中国法院在完美十诉亚马逊案中突破“服务器标准”，采用“实质性替代”认定侵权（第3章第2节）。
- 影视剧侵权相关观点：

上海千杉诉腾讯案中，法院认定“电视猫视频”破解技术措施传播影视剧构成直接侵权（第3章第2节）。

高方雄诉快手案中，平台因未审核用户发布未成年人隐私内容被判连带责任（第3章第2节）。

4. 利益平衡的关键考量

（1）著作权保护与产业发展的平衡

- 美国通过判例（如索尼案）保护技术创新，但米高梅案转向严格责任（第4章第1节）。
- 中国法院在秀秀科技案中批评平台“服务模式不当”，要求整改以平衡利益（第4章第2节）。
- 影视剧侵权相关观点：

四川高院白皮书指出，2018-2020年四川法院受理的著作权案件中，侵害信息网络传播权纠纷占比最高，反映影视剧侵权问题突出（结语部分）。

法院在配音秀案中强调“片段之短未必损害之微”，需兼顾权利人利益与商业模式创新（第4章第2节）。

5. 核心结论

中美影视剧侵权案件中，网络服务提供者的责任认定均呈现过错责任为核心、注意义务强化、利益平衡导向的特点。美国通过判例细化间接侵权类型，中国则依托共同侵权理论结合本土实践，两者均趋向严格责任以应对新技术挑战，但中国更强调司法能动性政策调控。

（五）算法推荐治理与平台侵权责任的认定——杭州中院判决字节跳动公司等诉腾讯公司等侵害作品信息网络传播权案

1. 来源：人民法院报

<https://www.chinacourt.cn/article/detail/2023/04/id/7265759.shtml>

2. 主要内容

(1) 裁判要旨

网络服务提供者对于其所提供的算法推送结果中的短视频是否为侵权视频，应承担更为严格的注意义务，如怠于履行注意义务致使侵权短视频大量传播，可认定其构成帮助侵权。权利人的预警通知中附有具体侵权短视频的筛选范围和筛选标准等具体要求的，网络服务提供者可采取对应的过滤拦截等事前防范措施。

(2) 侵权事实

腾讯视频平台存在大量用户上传的《战魂》片段剪辑短视频（782 条），部分经算法标记并推送。原告多次发送侵权通知（累计 390 次），但侵权内容未有效制止。

(3) 争议焦点

● 侵权短视频的认定

法院认为，涉案短视频仅截取原剧高光片段，未添加实质性创作内容，属于对原作的直接复制，不满足合理使用条件。

● 算法推送的责任边界

腾讯虽辩称仅提供存储服务，但法院指出其算法推送技术主动干预传播，且未对重复侵权采取必要措施（如屏蔽侵权账号），构成帮助侵权。

● 事前过滤的可行性

法院强调，权利人需明确具体过滤要求（如侵权视频特征），平台方可针对性部署技术措施，避免过度加重平台责任

(4) 裁判结果

● 一审：杭州互联网法院判决腾讯等三被告立即停止侵权，赔偿经济损失及合理费用。

● 二审：杭州市中级人民法院维持原判，驳回上诉。