

The challenge and adjustment strategy of network infringement to the traditional liability principle of civil law

Honghao Zhang

Guangdong University of Finance, Guangzhou, Guangdong, 510000, China

Keywords: network infringement; principle of liability; legal adjustment; platform liability; technical regulation

Abstract: With the rapid development of the Internet, the network infringement is increasingly rampant, which has posed a great challenge to the traditional liability principle of civil law, and has become a legal problem to be solved urgently. This paper aims to study the problems related to network infringement and explore the countermeasures. Through the detailed analysis of the current legal regulation status, the absolute, advanced and dynamic protection of network infringement in the civil code are analyzed. Using the method of combining case analysis and theoretical research, it analyzes the challenges of the traditional accountability principle in subject definition, damage quantification and accountability investigation. Finally, it puts forward adjustment strategies such as clarifying the legal status and responsibility of infringement subjects, introducing quantitative results of technical means, strengthening real-name system supervision and platform responsibility investigation, which provide a comprehensive and feasible reference for improving the legal regulation of network infringement and protecting the rights and interests of citizens in the network environment.

1. Foreword

The rapid development of Internet information technology not only provides convenience for peoples life, but also poses a threat to peoples personal and property rights and interests. As a special infringement form different from previous infringement, network infringement occurs more and more frequently. According to statistics released by Chinas Supreme Peoples Court, the number of infringement cases involving Internet users increased from about 10,000 in 2015 to 16,000 in 2020, with a growth rate of about 60 percent. The Civil Code of the Peoples Republic of China provides an important legal basis for regulating network infringement, but it still needs to be further standardized to deal with the complex network infringement dispute cases. In the face of these problems to be solved, this paper combed the regulation of network infringement legal regulation status, analyzes the attribution principle under the network infringement form problems and difficulties, and targeted on how to improve the new era of network infringement accountability path put forward targeted Suggestions, for the network infringement is certainty, reasonable quantitative provide perfect way.

2. The status quo of the legal regulation of the network infringement behavior

The Civil Code gives special provisions on Internet infringement, and attaches great importance to the protection of citizens legitimate rights and the rights and interests of personal information. Many laws and regulations have become the protection barrier for our self-relief after the network infringement. Specifically, it includes:

(1) Absolute protection: According to Article 995 of the Civil Code of the Peoples Republic of China, "Where the right of personality is infringed, the victim shall have the right to request the actor to bear civil liability in accordance with the provisions of this Law and other laws. The provisions of the limitation of action shall not apply to the right to stop the infringement, remove obstruction, eliminate danger, eliminate influence, restore reputation and claim an apology. "The establishment of personality right request system, at the same time, for the infringer of property rights, can claim the liability for infringement loss. (2) Advanced protection: Article 997 of the Civil Code of the Peoples

Republic of China stipulates the ban on the right of personality. That is, if the civil subject has evidence to prove that the actor is committing or is about to carry out the infringing acts of his personality right, and fails to stop them in time, and his legitimate rights and interests will suffer irreparable damage, it shall have the right to apply to the peoples court to take measures to order the actor to stop the relevant acts. The provision is intended to prevent the occurrence and expansion of the damage. (3) Dynamic protection: The Civil Code of the Peoples Republic of China stipulates that when determining the liability of the perpetrator, the occupation, the scope of influence, the degree of fault, the purpose, the method and the consequences of the perpetrator. Dynamical systems theory transcends the "all-or-nothing" principle inherent in component-based theories, offering a comprehensive evaluation based on the degree of influence and distinct roles of constituent factors.

3. The specific challenge of network infringement to the traditional liability principle of civil law

3.1 The participation of multiple subjects makes it difficult to define the network infringement subjects

There are many participants in network activities and complex identities, which makes it more difficult to identify network infringement subjects compared with general infringement. ^[1] This definition difficulty reflected in: anonymous infringement subject numerous and difficult to accountability, if the use of social platform, spread false information, or slander, insult, derogatory personality and reputation of others, its own is the main body, but when the infringing content is rapidly reproduced diffusion, there will be a lot of not distinguish authenticity network users with the infringement content forward transmission, cause the expanding damage consequences, its behavior also constitute the behavior. However, these retenders have no subjective infringement intention, and it is difficult to accurately track and locate each subject, quantify the infringement consequences caused by each person, and the responsibility is difficult to divide, thus leading to "the law does not blame the public".

3.2 It is difficult to quantify the damage consequences of network infringement

In the traditional determination of the damage result, the property loss suffered by the right holder can be recovered by directly claiming the physical value to the infringer. However, it is difficult to directly quantify the loss caused by network infringement. ^[2] On the one hand, although the right holder suffers from infringement, it does not necessarily form a substantial "loss". In this case, it is difficult to measure the loss of the right holder. On the other hand, the amount of damage is difficult to define. It is difficult to quantify the consequences of the infringement of personality right, such as privacy right and reputation right, and it is also difficult to determine the compensation for mental damage.

3.3 The anonymity of network infringement leads to difficulties in accountability

In the general form of infringement, the right holder can directly claim the liability to the infringer, however, in the context of network infringement, the complexity and concealment of information network technology make the liability investigation into a dilemma. ^[3] Many infringement subjects are difficult to be searched out, and then cannot effectively investigate the tort liability. In addition, the Internet has anonymity, openness and extensive participation and Internet space virtual and large, personnel involved also complicated, difficult to identify its real identity, multiple factors lead to the victim directly to the infringement of user rights cost increased, the right holder is difficult to relief through their own means or means. Although the Civil Code of the Peoples Republic of China stipulates the joint and several liability of Internet service providers, due to the scope of infringement is difficult to determine, Internet service providers are often careful to fulfill their relevant obligations, resulting in the damage suffered by the victims cannot be effectively remedied.

4. The strategy of adjusting the traditional liability principle of civil law under the network tort behavior

4.1 Clarify the legal status of the subject of network infringement and define the subject responsibilities of all parties

To delimit the legal status of civil subjects in network tort liability, any organization or individual who commits network infringement shall bear tort liability. Legal persons and unlegal person organizations should bear the network tort liability when they both commit the tort act and have the liability ability. For a natural person, if he reaches the legal age and has full civil capacity, he also has the corresponding ability to bear tort liability. Relevant provisions are required to refine the guardian liability if the infringer is a limited civil actor or a person without civil capacity.

Legislators regulate the responsibilities and obligations of subjects involved in online torts. (1) Establishing obligations for internet users to respect and refrain from infringing upon the lawful rights and interests of others. Set the user access threshold, you can ask questions and obtain certain results as the premise of giving users an account and network activities, so as to improve the users ability to distinguish the true and false information. (2) Network service providers, as managers who provide platforms and maintain network operations, have the obligation to actively maintain the security of cyberspace. It should be clear that the network service provider should inform the notification obligation to the network users: the network service provider should remind the network subjects in its network space and inform the network users of their rights and obligations.

4.2 Introduce technical means to improve the ability to quantify the infringement results

For the problem that the damage results are difficult to quantify, reasonable compensation standards should be formulated to digitize and monetize the damage results of network infringement. The quantitative standard of the amount of compensation must be reasonably determined on the basis of comprehensive consideration of the nature of the infringement, the influence of the infringement damage consequence, the fault degree of the infringer, the degree of transmission of the infringing content and the degree of social influence. For example, the comprehensive evaluation of the page view, the forwarding, the download, and the breadth of the infringing content. Therefore, a more advanced and powerful big data information technology is urgently needed for such a comprehensive factor analysis.

4.3 Strengthen the supervision of user real-name system and platform accountability

The real-name online system requires Internet users to provide their real identity information on the Internet to obtain an account and participate in online activities, which can prevent some illegal websites from using their virtual identity to deceive the public. For example, in order to more effectively maintain the network and collect the detailed information of network users, the United States has actively implemented the "network ID card" policy, which is actually the concrete implementation of the network real-name system. Drawing on the experience of other countries, in order to implement the real-name system, the regulatory authorities have the responsibility to urge network operators and network service platform operators to strictly abide by the real-name system and implement standardized management of Internet users. In addition, random inspections should be conducted from time to time. If the platforms do not implement the real-name system, they are required to correct within the prescribed time limit, otherwise they may face corresponding penalties.

For online platforms, it is stipulated that Internet service providers shall have the obligation to timely report to the regulatory authorities when they know or should know that the infringement may be suspected of serious illegal or criminal activities. If the network service provider fails to report these behaviors and later proves that it was intentional or negligent, it should be deemed as having a subjective fault and bear joint and several liability.

5. Conclusion

The particularity of network infringement makes the traditional liability principle of civil law face

difficulties, which needs to be adjusted by clarifying the responsibility of the infringement subject, using technology to assist quantitative compensation, strengthening the real-name system and platform management. This will help solve the problems of subject identification, damage quantification and accountability in online infringement disputes, improve the legal regulation system, protect the legitimate rights and interests of citizens in the online environment, promote the construction of the rule of law in cyberspace, and promote the healthy and orderly development of the Internet.

References

[1] Shan Changxu. Analysis of network infringement problems in the era of big Data [D]. Dalian Ocean University, 2020.

[2] Yang Lixin. Liability Rules and Compensation for Damages in Online Trading Platform Services, 31(1) Legal Forum 45 (2016).

[3] Liu Jinrui. The improvement of the regulation path of network violence infringement [J]. Political and Legal Forum, 2024, 42 (03): 66-76.