Research on Platform Operators' “Assumption of Corresponding Responsibilities”

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Abstract. The ambiguity in paragraph 2 of Section 38 of the Electronic Commerce Law regarding the liability of e-commerce service providers for non-compliance has led to persistent disputes in academic and practical circles. This paper explores what constitutes a more reasonable corresponding liability for platform operators. Theoretically, two major approaches exist: one advocates for a multi-faceted liability framework by comparing the platform with its internal operational conduct, while the other proposes a single, clearly defined liability. It is submitted that the non-compliance of the online trading platform with its review obligations cannot be regarded as active conduct for the purposes of joint and several liability. Rather, it can be considered passive inaction. Conversely, the single liability view seeks to define the liability type from multiple perspectives. In judicial practice, due to the difficulty of proving platform operators' fault in reality, courts generally tend to mitigate their liability. Overall, after analyzing differing perspectives in theory and practice, the author argues that interpreting platform operators' “bearing corresponding liability” as supplementary liability is more reasonable.

Keywords: E-Commerce Law, Platform Operators, Liability.

1. Introduction

In today's society, online transactions continue to evolve, with platforms emerging across various sectors. Platform operators hold extensive resources and information regarding consumers and the businesses operating within their platforms. The introduction of the Online Commerce Law sets out the rights and obligations of online platform operators in online transactions. This legislation has been developed in response to the rapid evolution of the internet industry. Products or services involving life and health in online transactions constitute core consumer rights, and protecting these rights is paramount. When consumers' life and health are harmed while using online platforms, platform operators must bear responsibility. Article 38, Paragraph 2 of the E-Commerce Law of the People's Republic of China stipulates that for goods or services related to consumers' life and health, if an e-commerce platform operator fails to fulfill its duty to review the qualifications of platform-based operators or fails to fulfill its duty to ensure consumer safety, thereby causing harm to consumers, it “shall bear corresponding liability in accordance with the law.” This article investigates the nature of the “corresponding liability” referred to in “bearing corresponding liability in accordance with the law.” Multiple perspectives exist on this issue, including joint and several liability, supplementary liability, joint liability or supplementary liability, liability commensurate with the degree of fault of the actor, and analogical application of Article 1198 of the Civil Code of China except in special circumstances otherwise provided by law. The author argues that consistent with the intent of the drafters of the E-Commerce Law, supplementary liability should be applied by analogy to the provisions of the Civil Code except in certain special circumstances.

2. Summary of Academic and Practical Disputs

2.1. Academic Disputes

It has been posited by certain scholars that the relationship between Art. 1198 (2) of the Civil Law and Art. 38 (2) of the Law on Electronic Commerce can be understood as one of generality and specificity [1]. However, given that Civil Code of the People's Republic of China also has a broad scope of application and may increase the cost of rights protection for victims, the provisions of the Civil Code should not be directly applied by analogy. This view advocates categorizing the “corresponding liability” borne by platform operators into three interpretations. In instances where both the platform operator and the platform-based operator demonstrate negligence, the concept of "corresponding liability" is interpreted to imply a form of joint and several liability. The rationale is that intentional and negligent conduct must be distinguished in such cases, and equal treatment should apply when both the platform operator and a third party are negligent. When the platform operator commits intentional infringement and the platform-based operator commits negligent infringement, the platform operator bears partial joint liability. The rationale is that intentional infringement involves a subjective intent to actively bring about the harmful result, warranting liability for the entire damage. If both the platform owner and the platform user commit an intentional infringement, the platform owner is liable for both infringements. The reasoning employed in this instance is analogous to that of the preceding scenario, and, in substance, aligns with the provisions of Article 1171 of the Civil Code. In order to impose joint and multiple liability, this rule should be applied analogically.

Some argue that “Appropriate responsibilities” cannot be interpreted as apportioned liability, since the “act” required for apportioned liability excludes passive omissions. However, the acts specified in Article 38 (2) of the E-Commerce Law—failing to fulfill safety assurance obligations and failing to fulfill review obligations—clearly constitute omissions. This view further contends that “corresponding liability” should subjectively constitute negligence. This interpretation is based on the overall provisions of Article 38 of the E-Commerce Law: Paragraph 1 explicitly requires the platform operator's subjective state to be intentional. If Paragraph 2 also required intent, it would result in redundant statutory provisions. Consequently, if the platform operator's fulfillment of corresponding obligations would have prevented the harmful consequences, “corresponding liability” should be understood as joint responsibility [2]. The rationale is that the platform operator's failure to fulfill obligations constitutes a necessary condition for the occurrence of the harm. Based on the causal force of joint tortious conduct, it is reasonable for the Online application operator to bear joint liability. Moreover, this joint liability is quasi-joint liability, as the platform operator may seek recourse from internal operators after compensating consumers. However, if the conduct of the platform operator merely increases the risk of consumer harm, the concept of "corresponding liability" should be interpreted as supplementary responsibility. A defining feature of China's supplementary liability system is the hierarchy of liability. Based on different legal grounds for liability, three tiers exist: those liable for fault, those liable under contract, and other statutory liable parties. A party at a lower tier may seek recourse from those at higher tiers after bearing liability. The core purpose of supplementary liability lies in limiting the expansion of tort liability and balancing the interests of the primary tortfeasor, the supplementary liable party, and the victim. In this scenario, the consumer is in a state of danger and suffers harm. Although the platform's conduct does not necessarily cause the harm, as the platform operator acts as both manager and beneficiary, it would be unreasonable and inconsistent with consumer protection principles for the platform to bear no liability. In this instance, Article 1198 of the Tort Liability Law is applicable. In circumstances where damage is inflicted upon another by the actions of a third party, the responsibility for tort liability lies with the third party. Furthermore, in instances where a manager or organizer neglects their duty to ensure safety, they are held accountable for any supplementary liability that ensues. This provision enables the platform to assume supplementary liability

Some argue that platform operators should bear supplementary liability [3]. From a systemic interpretation perspective, platform operators provide online transaction platforms for e-commerce transactions involving massive volumes, functioning equivalently to public venue operators, managers, and organizers of mass events. Moreover, based on the theory of hazard control and the beneficiary compensation principle, both parties' safety assurance obligations stem from their creation of hazard sources (venues), their profit-taking from such sources, and their possession of certain management and control capabilities, sharing a common legal foundation. Therefore, analogously applying the provisions of the Civil Code where Article 1198 establishes supplementary liability serves to maintain legal consistency. Regarding causation, the actions of platform operators do not necessarily lead to the occurrence of damages. Specifically, the platform operator's indirect tortious conduct merely increases the probability of harm occurring; whether harm actually materializes is not necessarily attributable to the platform operator. Under this contingent causal relationship, supplementary liability does not impose ultimate responsibility on the platform operator, nor does it exempt them from liability for breaching their duty of care during transactions—that is, requiring the entity responsible for the operation of the platform to bear the risk liability for the inability of operators within the platform to pay. Defining liability as supplementary liability aligns with the principle of fault-based liability while facilitating the supplementary liability's function as a “rich man's liability.” This approach protects consumers' right to compensation while precisely delineating the scope of platform liability, thereby balancing the interests of all parties involved.

Some argue that “Blurred responsibilities” should be characterized as liability in proportion to one's share [4]. Five primary reasons support this: Firstly, during the Legislative debate of the Electronic Commerce Law draft, provisions for "bearing responsibility" as either joint or additional liability were successively rejected. Pro rata liability occupies a middle ground between these two extremes. Imposing pro rata liability on platform operators ensures their responsibility is neither unduly light nor excessively heavy, achieving appropriate liability levels that better balance the interests of platforms and consumers. Second, joint liability and supplementary liability require exceptions; their application necessitates explicit legal provisions or contractual agreements between parties. Third, online platform operators bear heavier obligations than offline operators due to their advantageous position among the three parties involved in transactions. Fourth, joint tort feasance between platform operators and platform-based operators constitutes a combined causal relationship where the absence of either tortious act would prevent the outcome. Under tort law principles, both parties bear proportionate liability when lacking joint intent. Fifth, proportionate liability does not diminish consumer compensation. Since scenarios where platform operators are unable to compensate while platform-based operators can remain rare, proportionate liability safeguards consumer rights.

2.2. Judicial Practice

Legislation pertaining to the determination of "corresponding liability" for platform operators has been found to be ambiguous, resulting in ongoing disputes in practice.

In the “Huolala Case,” Shenzhen Yishi Huolala Technology Co., Ltd. failed to verify carrier driver Huang Xinjian's operational qualifications. Huang's improper operation during transportation caused a traffic accident, resulting in Wang Long's injury and a Grade 10 disability determination. The Shenzhen Intermediate Court held that Huolala's failure to fulfill its review obligations created a potential risk contributing to the accident. However, the court also determined that imposing full supplementary liability in the first instance was excessive. The court reasoned that the accident resulted from driver Huang's failure to drive safely according to operational standards, and Huolala's lack of qualification review for Huang was not the direct cause of the accident. The appellate court comprehensively considered Huolala's scale within the internet logistics e-commerce industry, the degree of its subjective fault in failing to fulfill review obligations, the causal contribution of its review deficiencies to the damages, the medical treatment needs of the severely injured victim Wang, and the compensation capacity of driver Huang. It therefore appropriately modified Huolala's supplementary liability proportion from 100% to 50% [5].

In the ongoing legal dispute concerning the allocation of responsibility for air pollution between the China Biodiversity Conservation and Green Development Foundation and Zhejiang Taobao Network Co., Ltd., the China Green Foundation argued that the original defendant, Shenzhen Sumai Environmental Protection Co., Ltd., engaged in illegal sales by offering products on the Taobao platform that helped vehicles with non-compliant exhaust emissions evade annual inspections. It was further contended that Taobao had failed to fulfil its safety assurance and review requirements, and that it should therefore bear joint liability alongside Sumai. The appellate court upheld the first instance ruling, concluding that Taobao did not participate in the transaction itself. Taobao had fulfilled its review obligations, including identity verification and preemptive warnings, and promptly removed the listings upon receiving the complaint. It could not be established that Taobao aided Sumai in committing the infringement. Following a comprehensive evaluation of the evidence presented, the court concluded that the claim for joint liability against Taobao and Sumai lacked sufficient support and was therefore not upheld. The disputed products merely possessed potential for use in legally prohibited contexts. The appellate court ultimately upheld the original judgment, merely requiring Taobao to enhance management without imposing joint liability [6].

Disagreements between first-instance and appellate courts also exist within the same case. For instance, in a case concerning a dispute over an online shopping contract the first-instance court determined that the e-commerce platform operator had breached its review obligations and should bear shared responsibility for the outcome. The appellate court, however, held that Taobao had publicly displayed Zheng's department store's food production license and business license on its merchant information page. After the dispute arose, Taobao promptly provided Li with Zheng's true name, address, and contact information. This demonstrated that Taobao had fulfilled its formal review obligations and cooperated with the consumer's rights protection efforts by providing relevant information about the food operator post-dispute. Thus, Taobao bore no fault. Furthermore, Li failed to provide sufficient evidence proving that Taobao knew or should have known that Zheng's Department Store was using its platform to infringe upon consumers' legitimate rights and interests without taking necessary measures, thereby causing consumer harm. Therefore, based on the above analysis, this court finds that Taobao bears no fault in the case at hand and should not be held jointly liable for compensation. Taobao's appeal is well-founded, and it should not be held liable [7].

3. Direction for Determining Platform Operator Liability

Given the practical and theoretical disputes, the author believes it is more reasonable to interpret “bear corresponding liability” as supplementary liability except where otherwise specified. From a systemic interpretation perspective, platforms, as organizers and operators of online transactions, resemble the operators, managers, or organizers of public gatherings specified in Article 1198 of the Civil Code. Moreover, the duty of care stipulated in Artikel 1198 of the Civil Law is analogous with the duty of care outlined in Artikel 38 of the E-Commerce Law, allowing for the analogous application of supplementary liability. Regarding the relationship between fault and liability, the platform operator's responsibility typically arises from failing to fulfill review obligations and safety assurance duties, which lack a direct causal link to the harm—instead involving indirect causation. Thus, imposing supplementary liability is more reasonable [8]. Imposing supplementary liability better aligns responsibility with fault, appropriately protects the legitimate rights and interests of platform operators, balances the interests of all parties, and maintains the stability of the legal order. Furthermore, supplementary liability allows platforms to seek recourse from operators within their platforms after assuming liability, consistent with the principle of fairness.

Relevant liability should not be interpreted as joint and multiple liability, as the latter imposes heavier burdens and prioritizes victim protection. For online platform, Unlimited liability must be applied cautiously and is contingent upon statutory or contractual provisions—it applies only when explicitly mandated by law, such as when aiding infringement or joint infringement occurs under Civil Code Articles 1198 or 1169 [9]. Moreover, the term "bearing common responsibility" does not equate to the concept of joint and multiple liabilities. From a legislative perspective, despite multiple revisions during the drafting and review process of the E-Commerce Law, joint and several liability never appeared in any drafts. This indicates that the legislative intent did not contemplate “corresponding obligation” as joint and several liability. The online trading platform's non-compliance with its review obligations cannot be considered as constituting active conduct for the purposes of joint and several liability, but rather passive inaction [10]. Imposing joint and several liability would necessitate comparing the negligence and intentional torts of both platform operators and platform-based operators, a comparison that presents practical difficulties [11]. Finally, imposing joint and several liability would prevent consumers from seeking full compensation for their losses from platform operators. Reducing the platform's liability would undermine the protection of consumers in a disadvantaged position.

4. Conclusion

Article 38(2) of the E-Commerce Law obscures the corresponding liabilities borne by platform operators, reflecting divergent views during the legislative process. This ambiguity has made the classification of liability the central point of contention among legal scholars and practitioners. Academic debates and judicial case discrepancies reveal that no clear standards or positions have yet emerged regarding platform operators' corresponding liability—an inevitable consequence of the legislation's deliberate ambiguity. After examining systemic interpretation, legislative intent, and interest balancing, this author argues that "corresponding liability" should generally be understood as supplementary liability in most scenarios.

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